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ILLINOIS RAILWAY LEGISLATION AND COMMISSION CONTROL SINCE 1870

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With an Introduction by M. B. Hammond, Ph.D.,
Assistant Professor of Economics

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NOTE.

During the year 1900-'01 the advanced students in the Economic Seminary devoted themselves to a study of the railroad development of Illinois, under the direction of Professor M. B. Hammond, who was in charge of the department during my absence in Europe. In addition to other excellent work done, the essay here published was written by Mr. Gordon, under Professor Hammond's direction. The history of railroad legislation before 1870 was also written up, but is not at present available for publication. Accordingly, Professor Hammond has kindly written an introduction to the present essay, covering the ground before 1870. This introductory historical sketch is drawn chiefly from the results of the labors of the students who were at work under Professor Hammond. Mr. Gordon has recently revised his essay with Professor Hammond's assistance.

DAVID KINLEY,
Professor of Economics.

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INTRODUCTION.

Railway Legislation Before 1870.

To the student of transportation problems the railway history of Illinois possesses an interest hardly equalled by that of any of her sister states. This is not because of the magnitude of the railway interests, though ever since 1870 the railway mileage of Illinois has exceeded that of any other state of the Union and her chief city has long been known as the railway capital of the world. Nor is it because of their antiquity that we feel an especial interest in Illinois railroads. Although this state was the pioneer among western states in railway building, and although both private and public agitation in favor of railroads began in Illinois almost as soon as in the East, most of the eastern commonwealths had already made a respectable showing in railway construction before the western agitation had attained any tangible results.

Our interest in Illinois railway problems lies rather in their legislative aspects. This state, after having experimented unsuccessfully with public ownership and management of railroads, abandoned the plan and, like most of her sister states, went to the other extreme and placed matters of construction and operation entirely in private hands. Not appreciating the fact that they were dealing with an institution whose relation to private industry and public welfare was essentially different from that of other industrial undertakings, the people of Illinois at succsssive sessions of the legislative assembly freely granted charters of incorporation to railway companies, and made little effort to place on the powers conferred such limitations as were necessary to safeguard the agricultural, manufacturing and trading interests of the state. The mistakes in this policy soon made themselves felt in the so-called "Granger"

agitation. After a bitter struggle in the courts and the legislature, the right of the state to regulate and control its railway corporations was secured beyond a reasonable doubt. It was in this struggle for control that Illinois led the way. The *McLean County* case, the *Neal Ruggles* case, the case of *The People v. The Illinois Central Railroad Company*, and, above all, the case of *Munn v. Illinois*, established the right of the state legislature under the Illinois Constitution of 1870 to regulate the charges for railway transportation within the state, and, furthermore,fully demonstrated the public character of the railway business. As is well known, these decisions had more than a local bearing. They became the precedents for decisions in similar cases arising in other states and they mark a new era in American railway affairs.

Nor was this the only way in which Illinois did pioneer work in railway legislation. She was the first state to establish a railway commission having the power of regulation and control in its own hands,—often called the "strong" commission, or the "commission with power". This, too, was an outcome of the Granger agitation and is closely connected with the decisions of the courts just referred to, which settled the right of the legislature to control the roads through such a commission. The question as to whether this type of a commission is preferable to the "advisory" type found in Massachusetts and other states has been ably discussed by various writers, who have not all reached the same conclusions. In Illinois, at the time the Railroad and Warehouse Commission was established, there was little discussion of the merits of one type as compared with those of the other. The condition of the public mind, which had been wrought up to a state of excitement and fury by the persistence of extortionate charges and unjust discriminations by the roads of the state, was not such that the people could be satisfied by mere advice. An effort was made to go directly to the heart of the difficulty by means of legislative prohibitions and by entrusting such powers to a

commission as were deemed essential to secure the enforcement of the laws. Perhaps the wisdom of this move, under the existing circumstances, has nowhere been better demonstrated than by the experience of the state of Iowa, which, when confronted with similar problems, first experimented with the advisory commission and later abandoned it to establish a "strong" commission modeled after that of Illinois.[1]

In this brief outline we have attempted to show the bearing of the Illinois railway problem of the '70's on the railway problem of the country at large. The way in which the people of Illinois solved their own problem forms the subject of Mr. Gordon's paper, and it would be a waste of words to attempt further to elucidate that which he has so clearly presented. In order to give this interesting episode its proper historical setting, it may be well, however, to present to the reader a short sketch of the early history of railway construction and legislation in Illinois.

As already suggested, a movement in favor of the construction of railroads in Illinois began as early as February, 1829, when Governor Coles of this State wrote to Governor Bernard of New York concerning internal improvements and among other things, inquired as to the probable expense of constructing a railroad through the open prairies of Illinois. At about the same time the editor of the *Illinois Magazine*, published at Vandalia, was advocating the building of railroads in Illinois.[2] By 1831 the matter was before the legislature and that body appointed a commission to report on the "practicability and probable cost of constructing a canal or railroad" in St. Clair county. The lack of an efficient means of transportation was sorely felt by the early settlers in Illinois, whose only highways were the muddy "dirt" roads which still embarrass the Illinois farmer in his efforts to market his crops.

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1 For an account of the Iowa experience, see Dixon's State Railroad Control, with a History of its Development in Iowa.

2 Illinois Magazine, I, 85.

The experiments being made with steam railroads in New York, Pennsylvania, Maryland and South Carolina at about this time were eagerly watched by the Illinois farmers, and it is not surprising that many of them believed that the new device for transportation offered them a means of escape from their own difficulties.

For several years, however, beginning with 1831, a keen controversy took place both within and without the legislature between the friends of the railroads and those who favored canals. The railway advocates certainly presented the stronger arguments[1] but, on the other hand, railway building was as yet in the experimental stage, while the success of the Erie Canal created a strong bias in favor of water as a means of transportation; and finally, in the legislative session of 1834-'35, the supporters of the Illinois-Michigan Canal triumphed over their railway opponents. But, although the canal project undoubtedly had popular support at this time, the desire for railroads still remained strong with the people. The same session of the legislature which adopted the canal project also passed the first railway incorporation act. This provided for the construction of a railroad from Chicago to a point on the Wabash river opposite Vincennes, Indiana. No organization was effected under this charter and the road was never built. The first railroad actually constructed in this state was a private enterprise, unincorporated, undertaken by Ex-Governor Reynolds in 1836-'37. It was a coal road, six miles in length, built from the bluffs in St. Clair county to the Mississippi river at a point about opposite St. Louis. In character and purpose this road was similar to the coal and granite tramways built in Massachusetts, Pennsylvania and other states, as well as in England, and, except as it marks a beginning, its consideration hardly belongs to railway history. The road was at first built with wooden rails, and horse power was the motive power, though later steam was

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1 Senate Journal, 1832-'33, p. 218.

employed.[1] This road was finally incorporated and is now a part of the Louisville, Evansville, and St. Louis Railroad. The Chicago and Galena Union Railroad, which was chartered January 16, 1836, was the first road to be chartered by an Illinois legislature which was actually constructed and put in operation under its charter. The survey of this road was begun in 1838, but the financial stringency following the crisis of 1837 delayed construction, and the road did not begin operation until near the close of 1848. This road later came under the control of the Illinois Central Railroad and now forms a part of its western lines.

From 1836 on, the incorporation of railroad companies in Illinois proceeded with some rapidity. Not only the incorporators but likewise the people and their representatives in the legislature expected large profits to be realized by these companies. Attempts were made in several of the early charters to guard against excessive profits. A notable example is the first act of incorporation of the Illinois Central Railroad, which provided that when the dividends exceeded 12 per cent. on the investment, the legislature might reduce the tolls. This marks the first attempt at restrictive legislation.

By far the most interesting chapter in the early history of Illinois railroads is that which deals with the effort of the people to establish a system of railroads owned and managed directly by the state. This was a part of the great internal improvement plan of 1837. Like many of her sister states Illinois was siezed with the internal improvement mania which possessed the people of the United States during the '30's. This is not the place to enter into a discussion of the forces which caused this remarkable movement. As historians have frequently pointed out, it was due, in part, to the growth of a surplus in the national treasury and its distribution in 1837, and, in part, to bank and land speculation then rife in all the

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1 Niles Register, November 25, 1837. See also Reynolds, My Own Times.

southern and western states. In Illinois the movement culminated in the internal improvement convention of 1836-'37, and this resulted in the passage through the legislature of the act of February 27, 1837, entitled, "An act to establish and maintain a general system of internal improvements". This act provided for seven commissioners to superintend the construction of certain specified public improvements, whose estimated cost was $11,000,000. These expenditures, for which a state loan of $8,000,000 was authorized, were, in part, for the improvement of the chief rivers of the state and, in part, for the improvement of roads and bridges in those counties where no railroads were projected; but all but $600,000 of the amount was for the purpose of constructing nine different railroads. This ambitious program, which was entirely beyond the resources and credit of Illinois at the time, was hastily passed in spite of the protests of conservative men within and without the legislature. Almost from the first, the impossibility of executing the plan was realized. Eastern capital would not enter the undertaking, as had been confidently predicted, and within three years after the passage of the act a special session of the legislature, called for the purpose, had repealed it. The only part of this stupendous undertaking which was ever completed was the construction of the Northern Cross Railroad from Springfield to Meredosia on the Illinois river, 33½ miles beyond Jacksonville. The first eight miles of the road, from Meredosia east, were opened in November, 1838, and the first locomotive ever used in the Mississippi Valley was then employed. The road was completed as far as Jacksonville by January 1, 1840, and to Springfield by May 13, 1842. It had cost $1,000,000. Its administration by the state was at a loss and it was soon sold for $100,000. None of its successive lessees succeeded in making it pay and by 1843 it had been abandoned. Prior to this, its one locomotive had been upset in a swamp and mules driven tandem had taken its place. In 1847 the road was again sold,

this time for $21,000, and was re-opened for traffic in 1849. It now forms a part of the Wabash Railway system.

The internal improvement plan, after having saddled a debt of $6,000,000 on the state, was reluctantly abandoned. Many people continued to hope that later years might see a renewal of the attempt to create a transportation system owned and managed by the state. The surveyed and unfinished portions of the state roads were granted to the local divisions of government through which they ran, with the *proviso* always inserted in the grant that the state might resume control whenever it desired to use them for their original purposes.

After the internal improvement plan had been abandoned, the legislature reverted to the plan of granting charters to private companies. Under the early railway charters but little had been accomplished. According to unofficial statistics,[1] there were as late as 1852 only ninety-five miles of railroad in operation in the entire state. The roads which were now chartered were, in many instances, planned to complete portions of the state roads begun under the act of 1837. The reluctance of the people to give up the plan of state ownership and management of these roads is seen in the *proviso*, usually inserted in the charters, that the state may purchase the road after a specified number of years by paying to the company the cost of the road together with interest thereon.

Professor B. H. Meyer, in tracing the history of the railway legislation of this period for the country as a whole, has shown that in all the western states, at least, these early charters were loosely drawn and that they show little comprehension on the part of the legislators of the public nature of the railway industry, or of the serious difficulties which were sure to follow as a result of the failure clearly to define the mutual rights and obligations of the corporations and the commonwealths.[2] In this respect the state of Illinois presented

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1 Chicago Daily Press, Feb. 16, 1856. But see p. 18.
2 Meyer, Railway Legislation in the United States, 8-9.

no exception to the general rule. In matters pertaining to capitalization, increase of stock, indebtedness, the accumulation of a sinking fund, and even in the determination of the route and the fixing of terminals, there was the utmost looseness and lack of uniformity. The early charters almost invariably conferred upon the directors unlimited power to fix the rates of toll, and this provision later proved embarrassing when the state undertook to regulate the charges for transportation. Relying upon the decision of the Federal Supreme Court in the Dartmouth College case as proof of the inviolability of their charters, the railway owners and officials insisted that any attempt on the part of the legislature to interfere with their rate-making power was a clear violation of their contract. In spite of the fact that a general incorporation act was passed by the Illinois legislature in 1849, the practice of granting special charters continued, and no road was actually incorporated under a general law until after 1870. The reason for neglecting to take advantage of the general incorporation act of 1849 seems to have been that any road organized under its provisions must still obtain from the legislature specific permission to condemn land, thus necessitating a special act for each road. Furthermore, the act of 1849 fixed the maximum rate for transporting passengers at three cents a mile.

During the years from 1848 to 1854 railway building in Illinois was greatly hampered by the attitude of the legislature in upholding what was known as the "State policy" in matters of railway construction. This policy was to refuse to charter any east and west road whose proposed terminals were trading centres outside of the state. The object was to build up commercial centres within the state and the policy was directed, in particular, against the cities of St. Louis, Missouri, and Vincennes and Terre Haute, Indiana. The pursuance of this short-sighted policy not only hindered the flow of capital into the state and retarded the industrial and commercial development of certain sections, but it caused retaliatory measures to be

adopted by neighboring states. The policy met with especially strong opposition from the residents of the southern part of the state and several conventions were called to protest against its continuance. Two special sessions of the legislature were called to deal with the matter, but so strong was the influence exerted by the supporters of this plan that it was not until 1854 that a more liberal policy prevailed.

In spite of this policy, however, railway building in Illinois in the early '50's proceeded with unparalleled rapidity. As already indicated, there were in 1852 only 95 miles of railroad in operation in the state. By February 16, 1856, there were 2410 miles in operation.[1] Of this amount only about three hundred miles were in the southern part of the state. From 1835 to 1869, inclusive, 413 railway charters were granted by the Illinois legislature and the great majority of these were framed after 1854.

Of the railway building of this period, by far the most notable undertaking was that of the Illinois Central Railroad. This enterprise has an importance not confined to the state of Illinois, since it marks the first important step in the policy of securing Congressional land grants in aid of railroads. Small beginnings of this policy had already been made in Illinois, as well as in other states. In 1835 an act of Congress authorized the legislature of Illinois, if it saw fit, to use the land granted in 1827 to aid in the construction of the Illinois-Michigan Canal for a railroad instead of a canal. Small grants of land had also been made by Congress to several southern states in aid of railway construction. Although several citizens have claimed the credit of having originated the Illinois Central railway project, the credit for having pushed the land grant through Congress undoubtedly belongs to Stephen A. Douglas. The desire to have a north and south line running the full length of the state had long been a pet scheme of the people of Illinois. The internal improvement plan of 1837 had

1 Chicago Daily Press, February 16, 1836. See also p. 18.

this as its main item and, after the failure of that ambitious program, another attempt was made in 1843 to provide for such a line by chartering the Great Western Railroad Company. Private capital, unaided by government subsidies, appeared unwilling, however, to undertake the project and, beginning with 1848, Douglas worked unremittingly to secure Congressional aid for the road. Finally, on September 26, 1850, Congress passed the act which gave to the State of Illinois the right of way 250 feet in width through the public lands and also the alternate sections of land, six sections deep, along the proposed route,—an amount of land aggregating nearly 2,600,000 acres. The Illinois Central Railroad Company was incorporated in January,1851,for the purpose of building the road, and the lands granted by Congress to the state were conferred on the company in return for a promise on its part to pay annually a tax of seven per cent. of its gross earnings into the State Treasury. This was to be in lieu of all other state and local taxes. The company which received the charter and the land grant was composed of New York and Boston capitalists of high financial reputation but the capital for the enterprise came, for the most part, from England. The bill incorporating the company was hastily passed by the legislature and was in opposition to the wishes of many who believed that the state should have retained the title to the lands and should have constructed and operated the railroad. Without discussing in this place the relative merits of the two plans, or seeking to justify the general principle of governmental subsidies in aid of private railway corporations, it may be said in all fairness, that in this case the Congressional land grant proved advantageous to all parties concerned. By withholding from the market for two years the sections of land not granted along the right of way, the Federal Government was able to dispose of these lands at an average price four times as large as that at which they were offered prior to making the grant. It also fixed the compensation for carrying the mails over the road and reserved the right to transport its troops and munitions of

war free of cost. To the state of Illinois the land grant and the building of the railroad added 150,000 in population within a very few years and the development of the state's resources was greatly hastened. Furthermore, the contract for the payment of the gross earnings tax has proved very advantageous to the state, and, judging from the market price of its stock, has not seriously affected the prosperity of the company.

Several other attempts were made to secure Congressional aid for Illinois railroads between 1837 and 1854, but they proved fruitless.

The financial disasters resulting from the failure of the internal improvement plan of 1837 led the framers of the Constitution of 1848 to insert a clause in that instrument, forbidding the General Assembly to give the credit of the state in any manner in aid of any individual, association or corporation. The people were soon convinced, however, that public aid of some sort was necessary, if railway building was to proceed rapidly. The state government being estopped from giving direct aid, the people turned to the local sub-divisions. In 1849 the legislature, in an amendment to the general incorporation act, provided that any county might, upon vote of its citizens, subscribe for shares in the capital stock of any such corporation to an amount not exceeding one hundred thousand dollars. Later acts extended the power to boards of supervisors, where the township organization prevailed, and to councils of municipalities. An attempt to increase this power of the local governments to aid railroads was made in 1869 by the passage of the so-called "tax-grabbing" law. The features of this law and the results of its passage are described in subsequent pages. We need here only to mention the fact that the encouragement which these laws afforded to counties, townships and municipalities to bond themselves in aid of railroads led to the adoption of many hastily-passed and ill-considered measures for furnishing financial aid to various companies. In some instances the aid thus rendered proved of advantage to all concerned, but in other cases it simply resulted in saddling a

heavy debt upon the local governments without yielding any corresponding benefit whatever.

There remains for brief consideration in this introductory chapter the early attempts on the part of the state to regulate the rates of toll upon the railroads, in order to prevent extortionate charges and discriminations. Until 1849 complaints of this character were infrequent, but about that time it began to be charged that the railroads were not only making extortionate charges for transportation, but that they were, in this way, making profits in excess of those in other industries. The Committee on Internal Improvements in its report to the legislature in 1849 recommended the establishment of maximum rates in every charter to be granted in the future. This recommendation found approval in the general incorporation act of that year which fixed the maximum passenger rates on roads chartered under its provisions to three cents a mile. The act further provided that for roads already chartered the legislature might alter the tolls, provided such alterations did not reduce the profits to less than fifteen per cent of the capital stock. The roads protested against the operation of this section, claiming it to be a violation of their charter contracts, and the people began to realize the difficulties of rate regulation which the loosely drawn charters had imposed on them. However, the demand for legislative action to control the rate-making power of the roads continued to grow louder and more emphatic throughout the two succeeding decades. This produced some effect in the requirement, inserted in some of the charters granted, that the roads should establish and maintain a schedule of uniform rates for both passengers and freight. Meanwhile railway consolidation which had been proceeding with great rapidity during the '50's and '60's was causing alarm and was being denounced as being "in restraint of trade." So great,indeed, was the fear of monopolistic power being secured in this way, that in the Constitution of 1870 a clause was inserted forbidding the consolidation of parallel or competing lines. Public opinion seemed to be divided, however, as to the

right of the legislature to modify the rates of toll on the roads already chartered, and between 1858 and 1869 every attempt to pass a general law fixing rates or for the prevention of discriminations failed of passage in the legislature. The first general law of this character was not passed until March 10, 1869. It limited the charges on the roads of the state to "reasonable rates," but did not attempt to define what was reasonable. On the other hand, the law stated: "That the company shall fix a reasonable and uniform rate of tolls does not mean that one road shall charge the same as any other road, or that the same rate for different roads is required." The act thus cautiously worded proved ineffective, and no attention whatever was paid to its provisions by any road in the state. The real struggle for securing effective public control over the railroads in Illinois began in the Constitutional Convention of 1870.

The railway history of Illinois may thus conveniently be divided into *five* periods, each period having its own peculiar characteristics.

The *first* period (1829–1836) is one of agitation, having no practical results other than the construction of a few unimportant tramways and the chartering of several roads which were either not built, or whose construction was postponed until later years. In this period the building of canals aroused more enthusiasm than did railway projects.

The *second* period (1837–1839) witnesses the effort of the state to construct and operate its own roads, an effort which fails utterly after having brought about the insolvency of the state government.

The *third* period (1840–1869) marks a return to the plan of incorporated private companies aided in some cases by Federal land grants and in others by the bond issues of counties, townships and municipalities. It is a period of rapid construction, but one in which later difficulties are engendered, owing to the loosely drawn charters and the reckless financial aid furnished by the local governments.

The *fourth* period (1870–1876) is characterized by the "Granger" agitation, and by the efforts of the people to regulate railway rates and to prevent unjust discriminations by the establishment of the Railroad and Warehouse Commission. During this period the struggle for control is being carried on in the State and Federal courts and results in the complete triumph of the policy of state regulation.

The *fifth* period (1877-present time) is a period of calm in which the principle of public control is recognized by the roads, and the work of the Railroad and Warehouse Commission is carried on without interference on the part of the railway managers. It is the importance which is attached to these later periods which furnishes the interest to the following pages.

University of Illinois,
March 1, 1904.

M. B. HAMMOND.

SECTION I

Railway Conditions in 1870 and the Constitutional Provisions Concerning Railroads.

The twenty years preceding 1870 had witnessed a rapid development of railroads in Illinois. In 1851 this commonwealth had only one hundred and eleven miles of railroads, and was the eighteenth state in the Union with respect to railway mileage. By January 1, 1871 the number of miles had increased to 4,823 an amount in excess of that of any other state.[1] The same period saw a rapid increase in the population and wealth of the state, an increase which was greatest in those sections through which the railroads had been built. The people of Illinois had soon realized the aid which might be rendered by the railroads in industrial development and the demand for increased railway facilities came from all parts of the state.[2]

So great was this eagerness for the extension of the roads that hasty and ill-considered means had often-times been adopted for the acceleration of the movement. Towns and counties had bonded themselves to subscribe to the stock of new railroads proposing to build through them and individual citizens in many cases went so far as to mortgage their property to subscribe to the stock of the roads.[3] By the granting of special privileges in charters the state legislature, also, did all in its power to hasten the construction of new lines of road.[4] From 1850 to 1870 charters had been granted to three hundred and twenty-two railway companies.[5] The close of the Civil War

1 H. V. Poor, "Manual of Railroads of the United States," 1871-'72, p. XXXII.
2 John Moses, "Illinois, Historical and Statistical," II:1057-8.
3 *Ibid.*, 1058.
4 Davidson and Stuvè, "History of Illinois." 1020.
5 Laws of Illinois, 1851-1869.

had left idle a class of men who were particularly attracted to the field of railway enterprise.[1] All of these causes had combined to produce an abnormal development of railroads.

It was inevitable that this over development of the roads should lead in many cases to failure. As a result of this failure the people saw that their hopes of the benefits to be derived from the building of the roads were, in most cases, not to be realized. The profits with which the holders of the railway stock were expecting to pay the interest on the debt which they had incurred to buy this stock were not forthcoming. Further than this, the stock itself was rendered valueless by the failure of the roads and often-times the farmer, with nothing to compensate him, was obliged to see the foreclosure of the mortgage which he had placed upon his farm to enable him to buy railway stock. The people were further dissatisfied with the fact that the roads were using up in the payment of large salaries to railway officials the profits which the public had expected to share. The citizens were also burdened with the heavy tax which was necessary to liquidate the bonded indebtedness of counties and towns.[2]

The chief cause of the public dissatisfaction, however, is to be found in the management of the roads. Each company arranged its rates with a view to securing as large a share of the traffic as possible and, as a consequence, the evils of discriminations between places and persons arose. Rates at competing points were made so low that they were not sufficient to pay the cost of transportation and the loss was made up by the charging of exorbitant prices at non-competitive points. Personal discriminations were also frequent. The absence of any regular tariffs made it necessary for each person to make a separate bargain with the company, and there were, as a consequence, great variations in the rates charged to

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1 Davidson and Stuvè, *op. cit.* 1020.

2 Moses, *op. cit.* II:1058.

different customers.[1] Mr. Pierce, one of the delegates to the Constitutional convention of 1870, declared that the railroads were charging exorbitant rates and were making discriminations, citing as an instance the fact that, in shipping lumber from Chicago to Springfield, it was cheaper to ship it to St. Louis and from there to Springfield than to ship it direct to Springfield from Chicago. He also asserted that the people of Illinois were being discriminated against in favor of the people of Iowa, Wisconsin, Kansas and Nebraska.[2] Although his description of the situation may have been overdrawn, it is certain that the practice of making unjustifiable discriminations was very general and that it was having in many instances a disastrous effect.

In addition to these grave evils of railway management in the state there was one which, although it worked no considerable hardship to the patrons of the roads, did much to aggravate them and to excite their hostility. This was the attitude which was assumed by the officials and employees of the roads in their dealings with the people. Little attempt was made by these officials to furnish the traveling and shipping public the most satisfactory service which it was in their power to give. The courteous treatment of the customers of a road is a matter of vast importance to the avoidance of friction between the roads and the people and the lack of a proper consideration of this point is stated by C. F. Adams[3] to have been one of the two great causes of the hostility to the roads which marked the Granger movement.

Two acts of the state legislature in 1869, which served as a good illustration of the lack of conservatism which marked the action of the legislature at that time, furnished a disturbing element of considerable importance in the railway situation in

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1 A. E. Paine, "The Granger Movement in Illinois," manuscript thesis, University of Illinois, 1900, 12.

2 Debates of the Constitutional Convention of 1870, II:1646.

3 "The Granger Movement", *North American Review*, CXX:398-404; Paine *op. cit.* 18, 19.

1870. These acts were known as the "tax grabbing" law and the "Lake Front" law. The first of these laws[1] provided that all counties and towns which had bonded themselves to aid in the construction of railroads should receive for ten years all of the state taxes on the increased assessment over the assessments of 1868, and all of the taxes which were raised during the same period from the railroads in benefit of which the debt was created, except, in both cases, the state school tax and the two mill tax. The sums thus received were to be applied to the payment of the bonds. The effect of this act was to increase greatly the amount of local aid voted to railway companies. By the "Lake Front" act[2], a portion of the lake front in Chicago, south of the river mouth, sufficient to construct miles of dockage and outside harbor was given to the Illinois Central and Chicago, Burlington and Quincy railway companies, together with some land for depot purposes within the city. In return for these grants the city was to receive $800,000, a sum which fell short of the actual value of the property by nearly $2,000,000.[3] The harmful effects of these two radical measures which provided such generous assistance to the roads will be seen later when the policy of the state changed from one fostering the railroads to one restricting them.

The evils from the over-development of the roads, and the discriminations and high charges, some justifiable but many not so; the hardships resulting from the too liberal use made of public and private credit in aid of the roads; the non-conciliatory action of the managers of the railroads; the evils attendant upon absentee ownership; and the radical attitude of the state legislature, all combined to produce in Illinois by 1870 a state of affairs which clearly could not long endure. Dissatisfaction was general throughout the state and was especially keen in the rural communities. The feeling prevailed that the

1 Public Laws of Illinois, 1869, 316-21.

2 *Ibid.*, 245-8; Davidson and Stuvè, *op. cit.* 1021.

3 *Illinois House Journal*, 1869, III:523-4.

previous state action with regard to the roads had been ill considered and that the necessity had now arisen for the state to take some positive action to curb the growing power of these corporations. That the attitude of the people toward the roads was the result of the Granger movement cannot be maintained, for in 1870 this movement was still in its inception. The first grange was not organized in the state until 1868 and the state organization was not effected until 1872. The same forces, however, which were to give the Granger movement the strength which it attained in Illinois were working to intensify popular opposition to the roads and in this way a close relation existed between the Granger movement as such and the attitude of the people toward the railroads at this time.[1] Such was the condition of public opinion when the Constitutional convention met in 1870.

The delegates to the convention seem to have been almost unanimous in the opinion that some measures restrictive of the railroads were necessary and they felt that public sentiment would support them in action along these lines. Mr. Snyder, a delegate to the convention from Saint Clair county, remarked that "if there is any one question on which there is unanimity in this state, it is on restricting these railroads."[2] But, although it was very generally agreed that there was a necessity for restrictive measures there was wide difference of opinion as to the method of restriction which should be adopted. The chief question to be settled was as to the power which the state possessed to adopt measures limiting railway charges.[3] On the one side it was claimed that the fixing of charges by the state legislature was an illegal violation of the rights granted in the charters to the railroads, and the decision in the Dartmouth College case was cited to substantiate this claim. On the other hand, it was argued that if the railway corporation was beyond public regulation, it had become superior to the state which had given it birth, a condition of affairs which was impossible. The belief

1 *Cf.* Paine, *op. cit.* 31.
2 Debates of the Constitutional Convention, II:1770.
3 *Ibid.*, II, 1637-64; 1708-23.

in an extensive power of the state to regulate the roads was the general one among the delegates and after an extended debate the convention incorporated in the Constitution certain provisions concerning railroads which were intended to define the power of the state over the corporations.

Article XI. of the constitution provides that no corporation shall be created by special laws; that the railroads shall make public the amount of their capital stock and the names of the stockholders, together with the amount of their assets and liabilities; that the directors of each road shall make a sworn annual report to some officers designated by law concerning such matters as may be prescribed by law; that consolidations of competing lines shall not be made; that the General Assembly shall from time to time pass laws establishing reasonable maximum passenger and freight rates; that stocks or bonds shall not be issued except for money, labor or property actually received; and, finally, that laws shall be passed to correct abuses and to prevent unjust discrimination and extortion in freight and passenger rates and to enforce such laws by adequate penalties to the extent, if necessary, of forfeiture of railway property and franchises. A resolution was presented in the convention providing for the insertion in the constitution of a clause establishing a railroad and warehouse commission but it failed of adoption.[1]

Thus through her fundamental law Illinois took an advanced position with regard to railway control.[2] The constitution prepared the way for the institution of some system of regulation, leaving to the legislature the establishment of the machinery through which regulation was to be accomplished. It even went so far as to command the legislature to pass restrictive legislation, an order for which there was no means of execution provided. The legislature, however, accepted the duty laid upon upon it by the constitution and enacted laws regulating the railroads, fully as advanced in character as were the provisions of the constitution which inspired them.

1 Debates, II, 1648.
2 Paine, *op. cit.* 20.

SECTION II.

The Restrictive Legislation of 1871 and the Work of the First Commission.

In the debate on the adoption of the railway article of the Constitution of 1870, it was declared by one of the delegates[1] that the people expected this article to inaugurate a fight with the roads. The constitutional provisions opened the way for positive legislative enactment, and the expectation of the people was soon realized.[2]

In his message of January 4, 1871, to the Twenty-Seventh General Assembly, the first to be held after the adoption of the new constitution, Governor Palmer considered the railway problem at some length.[3] He declared that the claim that the state legislature did not have the power to regulate railway rates was equivalent to the assertion that "a power had grown up in the state greater than the state itself". In considering the need for state intervention, Governor Palmer took an advanced position in regard to the effects of railway competition. "Those who deny the necessity of state intervention", he said, "insist that all of the evils of excessive tariffs and unjust discriminations in rates for transportation will be ultimately corrected by the competition of different lines of railways in their efforts to control business. Competition is far more expensive than direct methods of legal control. The grossest oppressions that burden the people grow out of the fierce and exhausting railway competition at important points, where their interests come in conflict; and one of the strongest reasons for the

1 Washburn, of the sixth representative district.

2 Paine, *op. cit.*, p. 21.

3 Senate Journal, 1871, 19-22.

interference of the Legislature to control the management of railway lines is, that the burdens of the useless competition of different lines are thrown upon intermediate points, where competition is impossible. Deprive railroad corporations of the power to impose discretionary rates upon their traffic, and the business community would suffer far less from the selfish contests of competing lines, that in their effect unsettle values, to the confusion of business and the disappointment of the most prudent commercial calculations." In regard to the difficulties of the railway problem, Governor Palmer added, "The difficulties that occur to my mind do not relate to the power of the state to enact and enforce proper laws, but they grow out of the complex nature of the subject. There are conflicting interests to be reconciled and adjusted, and nothing within the sphere of governmental action requires more delicacy of management than what is termed the railway problem."

The Twenty-Seventh General Assembly did not hesitate to follow the requirements of the constitution, and six acts, designed to institute state regulation of the railroads, were passed at this session.[1] These acts contained provisions, (1) for the incorporation of railway companies, (2) limiting railway consolidation, (3) regulating the receiving, transportation and delivery of grain, (4) prohibiting unjust discriminations and extortion in freight rates, (5) fixing reasonable maximum rates for passenger traffic, and, finally, (6) establishing a board of railroad and warehouse commissioners.

The general incorporation act prescribed and defined the duties of railway corporations, and limited their powers by expressly reserving to the general assembly the power to prevent unjust discriminations and extortions and to fix maximum freight and passenger rates.[2]

The act "to provide for changes in incorporated companies" granted to railway companies the right to consolidate, but provided that consolidation should not take place between

1 Laws of Illinois, 1871-72.

2 Ibid., 625-34.

parallel or competing lines.[1] As to what were to be considered parallel or competing lines the act made no statement. This provision of the law, following as it does a similar clause in the constitution,[2] is interesting as it reveals the general opinion of the time as to the effect of railway competition. Notwithstanding the opinion expressed by Governor Palmer, competition seems to have been considered an effective remedy for railway evils instead of one of the primary sources of some of the grossest of those evils.

The act regulating the receiving, transportation, and delivery of grain forbade discrimination between shippers and warehouses in the handling of grain.

The act to prevent unjust discriminations and extortion in freight rates[3] provided "that no railroad corporation organized or doing business in this state * * * shall charge or collect for the transportation of goods, merchandise or property on its said road, for any distance, the same nor any larger or greater amount as toll or compensation than is at the same time charged or collected for the transportation of similar quantities of the same class of goods, merchandise or property over a greater distance upon the same road, nor shall such corporation charge different rates for receiving, handling or delivering freights at different points on its road, or roads connected therewith which it has a right to use. Nor shall such railroad corporation charge or collect for the transportation of goods, merchandise or property over any portion of its road, a greater amount as toll or compensation than shall be charged or collected by it for the transportation of similar quantities of the same class of goods, merchandise or property over any other portion of its road of equal distance." The provisions of this act are thus seen to be more sweeping than the provisions of the "long and short haul clause" of the interstate commerce

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1 Laws of Illinois, 1871-72, 487-90.

2 Art. ix, Sec. ii.

3 Laws of Illinois, 635-6.

act of 1887.[1] The Illinois statute makes the charging of the same or greater sum for the shorter distance than is charged for a longer illegal under all circumstances, while the federal law only makes such a charge illegal when the shorter distance is included within the longer and the haul is in the same direction.

The act concerning freight rates further provided[2] that no increase should be made in the rate then existing between any two points, in following out the provisions of the act and that the rates on any day should not be higher than the rates which existed on the corresponding day of the year 1870. In cases where the law was violated, the party aggrieved was entitled to collect in an action of debt a sum not exceeding one thousand dollars and costs.[3]

Although the aim of this act, the prevention of unjust discrimination in freight rates was a laudable one, the act was so constructed that it worked injustice to the roads. Conditions may very easily be so different in different parts of a road that a reasonable charge for a certain distance at one place may be unreasonably high at another, and a discrimination by which more is charged for a shorter distance on one part of the line than is charged for a longer distance on another part may be perfectly just. The provision that rates should not on any day be higher than the corresponding rates on the same day of 1870 was also extremely unwise as the year 1870 presented some astonishing fluctuations in freight rates. In 1869 and 1870 freight rates between New York and Chicago varied from $5 to $37 per ton and between New York and St. Louis there were variations of from $7 to $46 per ton.[4] A worse year to serve as a standard could not have been chosen.

The act which had for its object the control of passenger rates[1] proposed to accomplish this by a classification of the

1 24 U. S. Statutes at Large, 379-387, Sec. 4.

2 Sec. 3.

3 Sec. 5.

4 R. R. & W. Com. Report, 1871-72. This report is published in the Reports to the General Assembly of Illinois, 1871, II: 423-596.

roads according to their gross earnings. The roads were divided into four classes as follows:

Class A—Those whose gross annual earnings per mile were $10,000 or over.

Class B—Those whose gross annual earnings per mile were between $8,000 and $10,000.

Class C—Those whose gross annual earnings per mile were between $4,000 and $8,000.

Class D—Those whose gross annual earnings were less than $4,000 per mile.

The act provided that the roads in these classes were not to charge for the transportation of passengers more than 2½, 3, 4 and 5½ cents per mile respectively, and required each road to keep posted a table of distances between points on its line together with a statement of the class to which the road belonged. Thus for the first time in the history of the state a classification of the roads with respect to the rates to be charged was made. Although the method of classification adopted, one based on the gross earnings of the companies, may not have been the best possible, the legislature in providing any form of classification took an advanced position for the time.

The legislative measure, however, that was to have the most far-reaching effect was the act establishing the railroad and warehouse commission. This act[2] provided that the governor of the state was to appoint within twenty days of the passage of the act a board of three commissioners, no one of whom was to have any connection with a railroad company or be interested in any stock or property of a company. To this board of commissioners the law required every railway company doing business in the state to make an annual report. Forty-one particulars on which definite report was to be made are specified. These embrace a very full statement of the rail-

1 Laws of Illinois, 1871-72, 640-1.

2 Ibid., 618-625.

road's business and of its running arrangements. Among other things each road was required to report on the amount of its capital stock, by whom it was owned, and the amount of cash paid the company on the original capital stock; the names and residences of its officials; the amount of its assets and liabilities and of its bonded and floating debt; the value of all its property; the mileage of the road and the mileage of freight and passenger trains; the monthly earnings and expenses from passenger and freight transportation; expenses for improvement; passenger and freight rates and a copy of all its published schedules, whether or not the published rates were followed; and the running arrangements with express and other railway companies. The commission was required to make an annual report of the facts gathered to the governor.

The commission was further required to inquire into the fulfillment of the law by the railway companies and to prosecute the company where cases of the violation of the law were reported to it or discovered by its own efforts. The commissioners were given power to examine the books of all railway companies and to subpœna witnesses. Failure to obey the process of subpœna was punishable by fine, imprisonment, or both. Failure to make the reports required by the law or by the commissioners was also punishable by fine. The attorney-general and the state's-attorneys were required to institute and prosecute all suits which were referred to them by the commissioners.

With these six measures the state legislature began the work of public regulation of the railroads. On July 3, 1871, Governor Palmer appointed Gustavus Koerner, Richard P. Morgan, jr., and David S. Hammond as the first board of railroad and warehouse commissioners.[1] The board met on July 5th and began their duties by sending requests to the railway companies doing business in the state to make a report by September 1st on the particulars specified in the act establishing the commission, and also requested a report by August 1st on

1 Moses, *op. cit.*, II., 809.

the amount of their gross annual earnings for the year ending June 30, 1871, and the total length of road on which these earnings were made, in order that the classification for the schedule of passenger rates might be made.

The railway companies were slow in sending in their reports and, as a result, the board was unable to make the required classification until its October meeting.[1] Of twenty-one roads operating in the state two did not issue reports, two did not issue reports full enough for classification, and of the remaining seventeen, two were classed in Class A, three in Class B, five in Class C, and seven in Class D. The gross earnings per mile of the roads varied from $1,800 in the case of the St. Louis and Southeastern to $15,000 per mile on the fourteen miles of the Lake Shore and Michigan Southern.[2]

The reports as sent in by the companies were imperfect. The different methods adopted by the various companies for keeping their books made uniform reports practically impossible. Books of different companies were kept for different fiscal years and many of the roads of the state were merely parts of great railway systems running through other states so that separate accounts were not kept for the part of the road in Illinois.[3]

Under such conditions, the task of securing compliance with the law must necessarily have been a difficult one, but it was rendered doubly so by the attitude of the roads toward the new laws. The people looked upon these laws as effectually settling the railway question. The roads, however, denied the constitutionality of the law and determined to pay no attention whatever to it until it had been passed upon by the courts.

This attitude is clearly shown in a letter which representatives of four of the leading roads of the state submitted on August 1, 1871, to the commissioners after a conference had been held with them. This letter formally denied the validity

1 R. R. & W. Com. Report, 1871, 4.
2 *Ibid.*, 64.
3 *Ibid.*, 5.

of the law under which the commission was working and asked that the board institute legal steps to secure in a court of last resort a decision determining "the relative rights and duties of the state and the railroad companies".[1]

Among the first of the complaints to be made to the commission were a number to the effect that the railroads were violating the long and short haul clause of the act to prevent unjust discriminations and extortion in freight rates. When the commissioners referred the complainants to the clause in the act which gave the party aggrieved the penalty of $1,000 for violation of the law, the complainants universally refused to prosecute, declaring that they could not afford to offend the railway companies as these companies had it in their power to do far greater harm by the denying of accommodations to the complainants than the penalty could benefit them.[2]

The first report of the commission, made in December 1871, pointed out that there had been a great increase in railway construction during the year for which the report was made and that a large amount of the stock of the new companies was fictitious, but the railway managers were nevertheless attempting to exact rates that would enable the companies to pay good dividends on all the stock issued.[3] The report urged the vital importance of early and effective action by the legislature to remedy this evil. No action, however, has ever been taken by the legislature with a view to the regulation of the practice of stock watering.

The existing legislation was discussed by the commissioners and amendments were suggested which they thought would be beneficial. They showed that the laws as passed conflicted in some particulars and that there was uncertainty as to just how far the new laws repealed previous legislation on the subject. The law establishing the board gave the commissioners power to institute suits against the railroads for violation of the laws, and it was

1 R. R. & W. Com. Report 1871, 59-60.
2 *Ibid.*, 6.
3 *Ibid.*, 9-11.

provided that the attorney-general and the prosecuting attorneys were to act under their direction, yet the kind of action, whether civil or criminal, was not indicated and in many cases the penalties were not fixed. The commissioners were of the opinion that, while the right of the individual to prosecute the company was retained, there ought to be a general provision by which any violation of the law would be made an indictable offense, or would subject the offender to a penalty to be sued for by the state.[1]

The report also pointed out the difficulty which arose from the classification of the roads for the purpose of fixing passenger rates when two competing companies were in different classes. The road which the law allowed to charge the higher rate of fare was compelled to reduce this charge to the rate which the law fixed as the maximum which its competitor could charge in order to meet its competition. The commissioners finally suggested a remedy which they thought would be of the greatest value in solving the entire railway question in the state and the one which in their opinion was perhaps most likely to be ultimately adopted, that the state own a few of its roads and by the management of these and the control of the tariffs charged by them, regulate the other roads of the state.[2]

In his message to the adjourned session of the general assembly which met November 15, 1871, Governor Palmer suggested that the new railway laws would need amendments to make them realize public expectations, as the commissioners were not provided with sufficient means to enforce the law. He pointed out in particular that the state's attorneys, the principal legal agents on whom the board had to rely would cease to exist after their present terms expired and the enforcement of the laws would be left to the county attorneys.[3] The chairman of the commission had prepared a bill, consolidating and digesting all laws then existing in regard to the railroads

1 R. R. & W. Com. Report, 1871, 14.

2 *Ibid.*, 25-26

3 Senate Journal, 1871, 11:5.

and removing all conflicting features. This bill was introduced in the house, but was lost in committee. A bill prepared by the commission, embodying all the railway police laws in force in the state, as well as some features from the legislation of other states, was introduced in the senate, but suffered the same fate as the house bill.[1]

In their second annual report the commissioners presented some interesting facts with regard to the railroads of the state. They showed that by November 30, 1872, there were 6,258 miles of railroad in the state with 1,587 miles in process of construction. The average cost of the completed roads as shown by the reports of the commission was $42,264 per mile. The commission believed that all expenditure over $25,000 per mile was due to fictitious stock, sacrifices made in sale of securities and other losses due to bad management and unavoidable delays in the work of construction.[2] By the time of the issuance of the second report railroads had been extended until seventy-three per cent of all the land in the state lay within five miles of some road in actual operation, twenty-one and one-half per cent lay between five and ten miles, four per cent between ten and fifteen miles, and one and one-half per cent lay more than fifteen miles distant from any railroad.[3] The twenty-seven roads actually operating and issuing reports full enough for classification showed a variation in gross earnings per mile for the year of from $772 to $19,885. The average gross earnings were $8,108 and the average net earnings, $2,789. Such in general was the condition of the roads when the attempt was made through the agency of the courts to put into force the laws concerning public control.

1 R. R. & W. Com. Report, 1872, 12.
2 *Ibid.*, 18.
3 *Ibid.*, 19.

SECTION III.

Litigation Over the Enforcement of the Law.

Unanimity of opinion throughout the state as to the advisability of the new laws in restraint of the railroads was lacking. In some portions of the state, and in Chicago especially, there was manifested considerable opposition on the ground that the state was taking up a war upon capital that would not be for best interests of the people. The counties that were anxious for railway development opposed any state action hostile to the roads. But in the corn-growing counties there was an active demand for the enforcement of the restrictive legislation. The summer of 1872 produced an extraordinary corn crop and the farmers were anticipating great profits from the sale of their staple. The railroads felt that the abundant crop would afford them a large traffic and consequently tariffs raised. In December, 1872, corn in central Illinois was worth seventeen cents a bushel, while the cost of the transportation of a bushel of corn to New York was thirty-five cents, over twice the value of the corn. The farmer saw that his expected profits would be absorbed by the railroads by means of a rate which he considered extortionate and he was determined to see the law enforced.[1] In answer to this popular demand, the commission sought to secure compliance with the law through the aid of the courts.

The first suit under the new laws was brought by Stephen R. Moore of Kankakee against the Illinois Central Railroad Company for charging four cents a mile for passengers when the classification of the commission called for by law allowed them to charge only three. The case was tried in the circuit court of Kankakee County on an admitted statement of facts.

1 Davidson & Stuve, *op. cit.* 1027.

December 4, 1872, Judge Wood, who occupied the bench for this trial, handed down a verdict for the railroad company. The grounds of his decision were that it had not been shown that the rate charged was unreasonable and that the fixing of rates by the legislature was an unconstitutional violation of the railway charter. The decision further held that the legislature could not at any time fix the fare as it had no judicial powers and no means of ascertaining whether a rate is reasonable or not. No appeal was taken from this decision of Judge Wood and at the time it was taken for granted that the decision was correct.[1]

In a later case, however, which came up under the same law, an appeal was taken to the supreme court of the state and the constitutionality of the law was upheld. This latter case, generally known as the Neal Ruggles case, arose in 1873, and the decision of the supreme court was handed down in 1878, five years after the law was repealed. The opinion of the higher court in this case was that "the legislature of this state has the power under the constitution to fix a maximum rate of charges by individuals as common carriers, or others exercising a business public in its character, or in which the public has an interest to be protected against extortion or oppression, and it has the same rightful power in respect to corporations exercising the same business, and such regulation does not impair the obligation of the contract in their charters."[2]

The first decision of the supreme court, however, in which the principal points at issue were covered, and the one which led to important changes in the legislation of 1871, was handed down in what is known as the McLean County case. This case arose in 1871 under the act to prevent unjust discrimination and extortion in freight rates. On December 5th of that year, J. H. Rowell, state's attorney of the ninth judicial district, acting on the information of the Railroad and Warehouse Com-

1 Davidson & Stuve, *op. cit.* 1028.

2 91 Illinois, 256.

mission began *quo warranto* proceedings against the Chicago & Alton Railroad Company for alleged violation of the act mentioned above. The information filed by the state's attorney set forth that this company had repeatedly transported lumber from Chicago to Lexington, a distance of one hundred and ten miles, for $5.65 a thousand feet, while at the same time it charged only $5.00 a thousand feet for transporting like lumber from Chicago to Bloomington, a distance of one hundred and twenty-six miles. The former haul was included within the latter. The railway company entered a plea, admitting the alleged facts, but setting forth the acts of the legislature by which it was incorporated and claiming that such acts gave it the right to use its own discretion in the fixing of tolls, and that the act of 1871 was in violation of its charter rights, and, therefore, unconstitutional. To this plea a general demurrer was interposed and the case came up for hearing on the demurrer.

It is worth our while to consider in detail the arguments presented by both sides of this important test case as they present a clear statement of the attitude assumed on the one side by the railway companies and on the other by the people.

Mr. Corydon Beckwith, for the defense, argued that the legislature in incorporating the railroad had given the directors the power to fix the rate of toll; that the Lexington rate was not unreasonably high while that to Bloomington was made unreasonably low to meet the competition of the Illinois Central; that by common law the company had the right to charge more for a less than for a greater distance in order to meet competition; that the state had the power to contract, the railway company the capacity to be contracted with, and that the state had not surrendered any inalienable rights in that the judiciary still had the power to determine what were reasonable and unreasonable rates; and, finally, that "the legislature never had the right to fix the rates to be charged by common carriers except by contract. It can no more fix them for an artificial person than for a natural one. It may require

of one as well as the other that the rates shall be reasonable; but it cannot make itself the judge of what rates are reasonable and what are not so. The contract makes the judiciary the judge between the parties, and the attempt to define the rights of the defendant by legislative enactment is simply the judgment of one of the parties to the contract."[1]

The argument for the people was an equally able defense of their position. It set up that the question underlying the case was whether the act of 1871 was in conflict with the provisions of the constitution of the United States; that legislative authority was a trust which the legislature could not irrevocably delegate or abandon and the legislature could not by a contract deprive a future legislature of the power of exercising any act of sovereignty confided to the legislative body; that the prevention of unjust discrimination and extortion comes within the legitimate exercise of the police powers of the state; and, finally, that it could not be presumed that the legislature intended irrevocably to part with the power of preventing by legislative enactment, unjust discrimination between communities or individuals, and, as nothing was taken against the state by implication, it was incumbent upon the defendant to show that the state by positive enactment had contracted with the defendant to withdraw permanently all control over its rate of charges.[2]

Judge Tipton, the presiding judge, handed down a verdict for the people, sustaining the demurrer to the plea. The decision took the ground that no part of the contract between the state and the defendant was impaired by the law of 1871, and that consequently the state retained the power so to regulate and control the franchise of the defendant as to determine what should constitute unjust discrimination between communities as well as between individuals, and to prevent such discrimination by proper legislation.[1]

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1 R. R. & W. Com. Report, 1872, 46-69.
2 *Ibid.* 70-98.

The case was appealed by the railroad company, and was tried in the January term (1873) of the state supreme court.[2] The decision was reversed and the case remanded. Chief Justice Lawrence, in delivering the opinion of the court, declared that the legislature had a clear right to pass an act preventing unjust discrimination in freight rates and to enforce it by appropriate penalties; that a less charge for a long distance than for a shorter one was an unjust discrimination unless the railroad could show a peculiar state of affairs to justify the discrimination further than the mere fact that there were competing lines at one point and not at the other; but the constitution of 1870 had given the legislature power to enact laws preventing *unjust discriminations*, and the act under which the case is being tried declares *all discriminations* unlawful without giving the railway company the right to introduce evidence to show that the discrimination was just. Thus, although the court held that the legislature had complete power to prohibit *unjust discriminations* in freight rates, it nevertheless declared that no prosecution could be maintained under the existing act until it was amended so as to prohibit *unjust* discriminations and not discriminations of all kinds.

The decision of Judge Lawrence cleared up the railroad situation in Illinois. It showed that the law which was intended to correct one of the grossest abuses in the railway business, unjust discriminations in the transportation of freight, had been so framed as to be contrary to the state constitution, and that consequently the legislature had failed in its effort to prevent discriminations in freight rates. But its greatest value lies in the dictum with regard to the power of the legislature to fix rates. It plainly declared that the courts of Illinois would not uphold the railroads in their contention that the legislature in granting them their charters had surrendered its right to regulate charges, and that they were, therefore, not subject to legislative control in fixing their rates.

1 R. R. & W. Com. Report, 1872, 99-114.
2 67 Ill., 11.

SECTION IV.

The Law of 1873 and the Powers of the Commission as Modified by It.

By the beginning of the year 1873, the opposition of the farmers to the railroads had reached a state of frenzy. Numerous farmers' conventions and meetings were being held and at all of them the railway situation seemed to be the most important topic for discussion. The management of the roads was violently denounced. A portion of an address delivered before a convention of delegates from granges and other farmers organizations, which met at Bloomington, January 15, 1873, clearly illustrates the radical attitude of the farmers[1]. "The whole railroad system is fast falling into a very few organizations each of whom represents hundreds of millions of dollars. It looks as though the 'King' in Wall street may soon rule over the whole. Already the country is parcelled out in lots and vast regions to the different systems. In most cases there is no restraint to their charges save only the ability of the victim to exist under the load. Like hostile invading armies, they levy contributions limited only by the ability of the victims to pay. These exactions are again aggravated by unjust discriminations against persons and places. If competition shows itself at a few points, they remorselessly double up on others within their grasp. They levy an Internal Revenue tax by their own fiat and to fill their own coffers..... The country is being robbed and large portions of the money basely applied. Unhappy France only submitted to be ravaged after a gallant struggle. These railroad Bismarcks prey upon us, and as yet we have scarcely lifted a finger. We must, Grant-like, move upon the enemy's works. If the tidal-wave now rising does not win, it must be followed by such a succession of others each higher and stronger till the railroad Pharaohs are brought to judg-

1 The Prairie Farmer, January 25, 1873.

ment." Nor were legal precedents to be allowed to stand in the way of the people in their effort to control the roads. "In our advancing civilization public interest and public necessity will not be thwarted by old and musty cobweb precedents. 'Dartmouth College' may have been well enough for that day and for an institution of learning; but it cannot much longer be made a standard rule and hobby horse for railroads..... Let that decision stand, for aught we care, for all such cases, but it will no more apply to railroad corporations than will the baby garments of infancy clothe the stalwart man, or the constable's posse meet the demands of a great revolution..... The new constitution of Illinois declares railroads to be public institutions subject to be regulated by law, and commands the legislature to act. The legislature has mildly obeyed. The roads spit upon the law and defy the people. They stand in open rebellion to the constitution and laws. Near here a judge has decided in favor of the supremacy of the people. This is a good start. There should be no faltering. Let public opinion be aroused and the executive and the legislature stimulated to bring all their powers to bear upon the question." Such were the remarks of a man[1] who had been a prominent member of the constitutional convention of 1870.

From the fruit growers of southern Illinois came the cry that they were "wholly at the mercy of the soulless I. C. R. R. Co."[2] The principal topic discussed at this time in the pages of the "Prairie Farmer," the leading granger organ of the West, was not some difficulty in corn-raising or fruit-growing, but rather the best means of bringing the railroads into subjection to the will of the people. Hadley in his "Railroad Transportation"[3] well describes the position of the farmer when he says, "They were concerned in securing what they felt to be their rights, and they were unwilling that any constitutional barriers should be made to defeat the popular will. They had

1 Hon. D. L. Whiting of Bureau Co.
2 The Prairie Farmer, January 25, 1873.
3 Page 134.

reached the point where they regarded many of the forms of law as mere technicalities. They were dangerously near the point where revolutions begin."

The farmers made their influence felt in the state government. When Governor Beveridge, after his succession to office, sent his nominations for the members of the railroad and warehouse commission to the senate for confirmation, the list was not satisfactory to the farmers. A storm of criticism of the Governor for ignoring the wishes of the people arose, which so influenced the senate that it became evident that the nominations would not be confirmed. As a result the Governor was forced to withdraw his nominations and send in appointments satisfactory to the farmers.[1]

The treatment accorded to Judge Lawrence by the people shows how determined was the attitude assumed by the farmers. When his decision was announced, notwithstanding the fact that it contained merely a statement of legal principles, the justice of which was clearly obvious, it was received with an outbreak of denunciation. The farmer had supposed that the vexed railway questions had been finally settled by the laws of 1871, and their disappointment was keen. The Supreme Court and Judge Lawrence in particular were denounced as being in the pay of railroads, and when Judge Lawrence ran for reelection the following summer, he was defeated merely through the unpopularity which arose from this decision.[2] Such was the intense state of popular feeling.

Nothing was more natural than that this determined attitude of the people should lead to a demand for new legislation. The act declaring discriminations in freight rates illegal was intended to correct the evils in the freight tariffs, and with it declared unconstitutional, one very important feature of the restrictive legislation of 1871 became of no effect. Some law to take its place was, therefore, demanded. On April 2, 1873, while the legislature was still in session, a convention of the farmers of

1 The Prairie Farmer, February 15, 1873.

2 A. T. Hadley, "Railroad Transportation," 134.

the state met at Springfield to urge the enactment of a new railway law to take the place of the one which had been declared unconstitutional.[1] In response to this popular demand and with a view to meeting the defects in the law of 1871 which had been pointed out by Judge Lawrence in the decision of the Supreme Court and by the railroad commissioners in their annual reports, the Twenty-Sixth General Assembly passed, May 2, 1873, an act to prevent extortion and unjust discrimination in freight and passenger rates, repealing the act of 1871 to prevent unjust discrimination and extortion in freight rates.[2]

The new law prohibited unjust discrimination and the charging of more than a reasonable rate, and made *prima facie* evidence of unjust discrimination the charging of a greater sum for the transportation of passengers and the same kinds of freight for a less than for a greater distance; and the charging of different sums for the same distance, for different persons and for the same kinds of freight; and further declared that the existence of competition at certain points is not a justification of such discrimination.[3] The penalty for violation of this provision is a fine which is to be recovered by an action for debt in the name of the state.[4] The railroad and warehouse commissioners are enjoined personally to investigate and ascertain whether the law is being observed and to prosecute all violations of it.[5] The commissioners are further directed to prepare a schedule of reasonable maximum passenger and freight rates for each of the railroads in the state. In actions of law the rates of such schedules are to be taken as *prima facie* reasonable.[6]

This last provision of the act gave to the commission a new power of vast importance, and by means of it a long stride in advance in the work of railway regulation was taken. The legislature had now hit upon a means of controlling rates which,

1 Prairie Farmer, April 12, 1873.
2 Revised Statutes of Illinois, 1874, 816-20.
3 Sec. 3.
4 Sec. 5.
5 Sec. 7.
6 Sec. 8.

while perhaps not the best possible, was at least far superior to the one which had been attempted. The laws of 1871 had fixed maximum passenger rates for the roads, but no attempt had been made to fix maxima for the freight rates, the only provision being that freight rates must not be unreasonable or discriminating. Any scheme, however, by which an attempt is made to fix the rate of tariff by legislative enactment has one great defect, the lack of flexibility. No matter how just may be the maximum rates fixed by the stutute, changing conditions will necessitate constant changes in the laws, which it is impossible to secure. This difficulty was obviated in 1873 by placing in the hands of a board the authority to fix the maximum rates, and the granting of this authority greatly increased the power of the commission.

The act as amended in 1873 is the law under which the commission is working at the present time. The chief duties of the commission prescribed by this law, so far as they pertain to railroads are:

1. The making of schedules of maximum freight and passenger rates.
2. The investigation of complaints and the enforcement by prosecutions of violations of the schedules and of the statutes.
3. The taking of precautions to secure proper and safe physical condition of roadbeds, bridges and trestles.
4. The requiring of annual reports from the various roads.
5. The making of an annual report to the governor.

The Illinois commission was thus a "strong" commission, that is, a commission "with power." In this respect it inaugurated a new method of railway control in the United States. State railway commissions had existed since 1836, when a commission was established in Rhode Island,[1] and in 1871 six states[2] had commissions, all of which were of the type of the advisory or

1 Meyer, Railway Legislation in the United States, p. 65.

2 New Hampshire, 1844; Connecticut, 1853; Vermon t, 1855; Maine, 1858; Ohio 1867; and Massachusetts, 1869.

"weak" commission. In the creation of commissions since 1871, the majority of states have followed the example set by Illinois and have adopted some form of the strong commission. Thirty states at the present time (Jan. 1, 1903) have railway commissions. Of these, ten states[1] have established advisory commissions and the remaining twenty[2] have commissions of the strong type.[3]

The functions of the weak commission are supervisory and advisory. Complaints against the railroads are made to the commission and if on investigation it believes the complaints well grounded, it recommends to the railway company the correction of the evil complained of. Failure of the roads to comply with the recommendation is reported to the governor or to the legislature. In addition to the supervisory and advisory functions of the weak commission, the Illinois commission has been given the further power of regulation. Not only has it the right to investigate complaints and to make recommendations to the railway companies, but it also has the power by the institution of suits to compel obedience to its regulations and compliance with the law.

A typical form of the weak commission is that formed in Massachusetts. In that state the chief duties of the board are:

1. To investigate as to whether the roads are living up to their charters and to report violations of the charter rights.

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1 The ten commissions with the dates of their establishment are: Colorado, 1885; Connecticut, 1853; Massachusetts, 1869; Michigan, 1873; New York, 1883; Ohio, 1867; Rhode Island, 1872; Vermont, 1855; Virginia, 1877: Wisconsin, 1874.

2 Alabama, 1881; Arkansas, 1899; California, 1876; Florida, 1897; Georgia, 1879; Illinois, 1871; Iowa, 1878; Kansas, 1901; Kentucky, 1880; Louisiana, 1898; Maine, 1858; Minnesota, 1871; Mississippi, 1884; Missouri, 1875; New Hampshire, 1844; North Dakota, 1889; South Carolina, 1878; South Dakota, 1889; Tennessee, 1897; Texas, 1891.

Interstate Commerce Commission Report on "Railways in the United States in in 1902," Pt. IV., 46-60.

3 F. C. Clark, "State Railroad Commissions and How They May be Made Effective," in *Publications of the American Economic Association*, VI: 473-582, Appendix A, Table I.

2. To care for the safety and accommodation of the public.
3. To inspect books of railway companies and to require a uniform system of accounts.
4. To summon witnesses in order to decide upon the merits of a controversy and to arbitrate disputes between the roads and the complainants. If the roads refuse to obey the recommendations of the commission, the attorney-general decides whether the state shall prosecute or not.
5. To make annual reports to the legislature.

The commission relies chiefly on public opinion for the enforcement of its decisions. The public press is used in keeping the recommendations of the commission before the people, and the legislature is ever ready to enforce its decisions. In this way a very effective control over the roads has been secured.

Under these circumstances it might seem at first thought that the natural course for the Illinois legislature to have taken would have been to model the Illinois commission after the commissions which were already in successful operation elsewhere. It must, however, be remembered that the state constitution enjoined upon the legislature the fixing from time to time of reasonable maximum passenger and freight rates, and this duty was very naturally entrusted to the commission as the most efficient body for carrying out the constitutional provisions. There were, moreover, differences between the conditions in the New England states, where all the commissions then existing, with the exception of the one in Ohio, were to be found, and in Illinois, which made it highly probable that a supervisory and advisory commission would not be successful in its working in this state. The commissions in the East worked in conservative communities where public opinion was a powerful force. The roads were owned largely by capitalists living in the community and on whom public opinion could easily exert its force. In Illinois, however, the roads were owned by eastern capitalists who, however sensitive they may have been

to public feeling were, as C. F. Adams points out,[1] in no position to appreciate the exact state of that feeling. Further than this, railroads had reached a considerable development in New England before the commissions were established, and these bodies were not often forced to meet and correct the evils arising from rapid railway building.[2] Industrial conditions were in a more settled state, and industry had adapted itself to transportation conditions, while in Illinois in 1870 this adaptation had yet to take place. Such considerations seem to indicate that the results obtained in New England could not have been attained in Illinois by the same type of a commission.

In addition to these considerations, the attitude which the railroads actually assumed would seem to furnish conclusive evidence that a commission of the Massachusetts type would have been unable to cope with the situation in Illinois at this time. The railroads made no attempt to correct evils which it was very evident were universally condemned by public opinion. When public opinion had shaped itself into the restrictive legislation of 1871–73, it has been shown that the railroads displayed no inclination to yield and only conformed their practices to the demands of the public when forced to do so by the courts.

1 "Railroads, Their Origin and Problems," 140.

2 F. B. Dixon, "State Railroad Control," 201-203.

SECTION V.

The Schedule of Maximum Rates.

One of the most important provisions of the law of 1873 in its direct bearing on railway conditions was that which made it the duty of the commissioners to prepare a schedule, for each different railroad, of reasonable maximum rates of charge for the transportation of passengers and freight. Although such a provision as this brought the railroads to a much greater degree under the control of the commission, there were serious objections to conferring on the commission such a power. It is in the first place more expedient to give a commission the power to investigate any particular rate and to make its findings with respect to that one rate *prima facie* evidence of reasonableness than it is to require of the commission the making of schedules of rates. Different roads work under such different sets of conditions that not only do reasonable rates differ for each road, but they also differ for the different sections of the same road. Justice in the rates allowed could only have been approached by the commission undertaking the preparation of a schedule for each road in the state. Even such a plan would have left out of account the important fact that reasonable rates differed on the same road. This difficulty could only have been met by the clearly impossible task of preparing schedules of reasonable rates for each road and between all of the points of shipment on each road. The further difficulty would have remained that the time of year is a determining factor in the consideration of the reasonableness of rates, and a rate which is reasonable for one time of year might be clearly unreasonable for another.

An attempt is made in the law under which the Interstate Commerce Commission is working to obviate the difficulties which arise from the adopting of schedules by a commission.

That law makes it the duty of the commission to investigate individual rates on complaint or on its own motion and determine their reasonableness. The courts have, however, refused to admit the findings of the commission as *prima facie* evidence of reasonable rates and Congress has not yet conferred upon the Commission the right to determine in specific cases what rate is reasonable and to enforce its findings. While there are many grave objections to a plan of this sort, it seems probable that its employment in Illinois would have been more beneficial in its workings than the plan which was adopted.

A difficulty in the practical working of the law arose from the fact that the duty of making the schedules devolved upon a board of commissioners which had been in office less than a year and which was made up of men who were not practical railroad men. Although the remainder of the law went into effect July 1, 1873, special provision was made that the section providing for the adoption by the commission of the schedules of maximum rates should not go into force until January 15, 1874. This provision was made in order that the commissioners might be given ample time to prepare the schedules. In August of 1873, the commissioners began the arduous work of preparing these schedules.[1] A more difficult task cannot easily be conceived of. The men whose positions best fitted them to prepare schedules of reasonable rates were the traffic managers of the various roads, but whenever these managers were summoned before a commission, they referred that body to their published schedules as their idea of reasonable rates. It was, however, the evils of these very schedules which the commission was seeking to remedy. The commissioners were largely guided in their work by the testimony of well informed shippers throughout the state. The amount of capital invested in road and equipment, the amount of business done, and the average proportion of the operating expenses to the gross earnings were given important consideration.

By the plan which was adopted, the roads of the state were

1 R. R. & W. Com. Report, 1873, 25, 26.

divided into five classes, and different rates were provided for each class. The basis of the classification of the roads was the amount of business done and the cost of operation. In the first class known as "the standard class," was put a number of the leading roads of the state doing about the same amount of business at approximately the same cost.[1] In the second group were placed all of the roads doing a greater business than the roads of the standard group.[2] In the remaining three groups were placed the roads doing a less business than the roads of the standard group.[3] It will be seen that in this classification the second group comprised the most prosperous roads of the state and the fifth the least prosperous.

The maximum passenger rates fixed by the commission varied from two and one-half cents a mile for the roads of the second group to four cents a mile for the roads of the fifth group. Freight was divided into four classes, and for each class a rate on one hundred pounds of freight for the first mile was fixed as well as the amount to be added for each additional mile from one to five; from five to twenty; from twenty to thirty; from thirty to one hundred and forty; and from one hundred and forty to two hundred and forty-seven miles. Car-load rates for each class were fixed and special car-load rates corresponding to the commodity tariffs of the present time were made for (1) flour and meal; (2) salt and cement; (3) grain (except wheat;) (4) wheat; (5) lumber; (6) horses and mules; (7) cattle and

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1 There were ten roads in this class as follows: Chicago and Alton; Chicago, Burlington and Quincy; Chicago and Northwestern; Chicago, Rock Island and Pacific; Illinois Central; Indiana, Bloomington and Western; Indianapolis and Saint Louis; Ohio and Mississippi; Pittsburg, Cincinnati and Saint Louis; Wabash.

2 These were: Lake Shore and Michigan Southern; Michigan Central; Pittsburg, Fort Wayne and Chicago. These, it will be noted, are all Eastern "trunk lines," having very few miles within the state.

The third group comprised the following roads: Chicago and Eastern Illinois; Illinois and Saint Louis; Saint Louis, Alton and Terre Haute; Toledo, Peoria and Warsaw; Western Union.

In the fourth group were the Peoria, Pekin and Jacksonville; The Rock Island and Peoria; and the Saint Louis, Rock Island and Chicago. The fifth group contained the remaining six roads of the state. R. R. & W. Report, 1879, v-Com.-vii.

hogs; (8) sheep; and (9) coal. These rates were fixed for the roads of the first or standard group. The maximum rates of the second group were ten per cent. lower; those of the third, fourth and fifth groups, five, ten and fifteen per cent. higher respectively.[1] The rates fixed by the commission for the standard group varied from thirty-seven cents for carrying one hundred pounds of merchandise of the first class one hundred miles to eighteen and one-half cents for a similar haul of merchandise of the fourth class. The standard rate on wheat in car load lots for a hundred miles was 14.26 cent per hundred pounds. The corresponding rate on coal was $1.60 a ton.

In the classification and fixing of rates, various principles must have been recognized. A few illustrations will show the conflicting influences. Common soap, for instance, was placed in the fourth class, while fancy soap went into the second class.[2] The cost of hauling different kinds of soap would be the same and the justification of placing different kinds of soap in different classes must be found in the fact that one kind was more valuable than the other. The value of the commodity must, therefore, have been recognized in fixing the rate. On the other hand, butter in crocks was placed in the first class, and butter in kegs or boxes in the second,[3] a clear recognition of the "cost of service" principle. In their report for 1873, the year in which these schedules were prepared, the commissioners state that the justice of the rates was the end aimed at in preparing the schedules[4] but they do not state what basis they took for determining just rates. In the report for the following year, however, the same commission, with one change in its membership,[5] discussed the question of what constitutes

1 R. R. & W. Com. Report, 1879, vi, vii.

2 *Ibid.*, 1874, 376.

3. *Ibid.*, 1874, 371.

4. *Ibid.*, 1873, 26.

5. Chairman H. D. Cook had died in November, 1873, and had been succeeded by James Steele.

reasonable rates.[1] In the discussion the cost of the road and the aggregate cost of service are both rejected as criteria in determining reasonable rates, and the conclusion is reached that "there are certain maximum charges for transportation which the business of the country can afford to pay and beyond which it cannot afford to go," and if the value of the road is so high, that when these maximum rates are charged, a reasonable per cent. of profit is not made, "the sooner its owners cut down its nominal value to such figures, or sell to other parties at such price as will justify its operation at reasonable rates, the better for the community and all concerned." As to what is a reasonable rate for the transportation of a particular commodity the board comes to no definite conclusion further than that a classification is necessary and that a variety of circumstances enter in to make it "worth more to transport some commodities than others." The commissioners thus more or less definitely recognize the "value of service" principle, or the principle of "charging what the traffic will bear" as the true criterion of reasonable rates. As we have seen, however, an examination of the classification which the commission adopted shows that the "value of service" principle was not consistently and exclusively followed, but that "cost of service" and other principles exerted a strong modifying inflence.

As might be expected, the schedules of reasonable maximum rates were unsatisfactory both to the commission and to the people, while they were exceedingly obnoxious to the railroads. The traffic managers, who had not been in the habit of following even their own schedules, refused to follow those which were prepared by a body of men whose authority over them and whose ability to deal with so intricate a matter was denied. The result was that the roads paid scant attention to the schedules and considered them as in no way binding. Again a fierce struggle over the enforcement of the law broke out in the courts.

1. R. R. & W. Com. Report, 1874, 21-24.

SECTION VI.

The Final Struggle in the Courts.

On July 1, 1873, apparently as the result of some agreement between the different companies, rates at all competing points and at many non-competing points advanced, and the public was coolly informed that the advance in rates was due to the workings of the new law.[1] The commissioners accepted this action on the part of the railroads as equivalent to an ultimatum by them that it was their intention to settle the points at issue in the courts. Suits were accordingly commenced by the commission against the Chicago and Northwestern Railroad Company at Freeport and against the Illinois Central Railroad Company at Urbana on the charge of extortion.[2] The commissioners thought it best, and in this view they were upheld by their legal counsellors, not to begin other suits until the schedules which were to be prepared by them became *prima facie* evidence, as they would be on the fifteenth of January following.[3] The case against the Chicago and Northwestern Railroad Company was begun in the December term of the circuit court, was continued to the March term, then to the September term and again to the March term, 1875, to await the decision of the Supreme Court of the United States on cases pending before it.[4] The case was later dismissed by the commission.[5] The suit against the Illinois Central was also dismissed, the purpose of the commissioners being to institute new suits when the schedules went into effect.[6]

In testing the validity of the law, the policy of the com-

1 R. R. & W. Com. Report, 1874, 9, 10.
2 *Ibid.*, 8-10.
3 *Ibid.*, 1873, 29.
4 *Ibid.*, 1873, 10.
5 *Ibid.*, 1875, 17.
6 *Ibid.*, 1874, 10.

mission was not to institute suits in all cases where violations of the statute were found, but rather to begin suits against the most powerful corporations in cases in which the various points of issue were clearly involved.[1] The first case in which a decision of the principal point of controversy, the right of the legislature to authorize the commission to make a schedule which would be *prima facie* evidence, was made by the Supreme Court of the state, was that of "The People v. The Illinois Central Railroad Company." This case was begun at the October term, 1874, of the Douglas county circuit court.[2] Judgment for one thousand dollars was rendered against the railway company in this court[3] and the case was immediately appealed to the Supreme Court. The proverbial delay of the law was evidenced in this case, and the decision of the Supreme Court was not handed down until 1880. By this decision the judgment of the circuit court was affirmed and the validity of the law of 1873 declared.[4] Although this was the first case decided by the Supreme Court of the state in which the law of 1873 was involved, the right of the state legislature to fix a maximum rate of charges had already been upheld by the Supreme Court in the Neal Ruggles case to which reference has been made.[5]

The law empowering the commission to fix schedules of maximum rates and to compel the roads to abide by them was thus upheld by the courts of Illinois. It yet remained for the Supreme Court of the United States to declare whether or not the constitutional provision that no law impairing the obligation of a contract should be passed by a state legislature had been violated. This point was covered in a decision handed down by the Supreme Court of the United States in October, 1876, in the case of Munn v. Illinois. The court held in this case that the state legislature had the right under the constitu-

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1. R. R. & W. Com. Report, 1875, 15.
2. *Ibid.*, 1874, 12.
3. *Ibid.*, 1875, 17.
4. 95 Ill. 313.
5. Above, pp. 28-29.

tion "to limit the rate of charges for service rendered in a public employment, or for the use of property in which the public has an interest."[1] The decision in this case served as a precedent upon which was based the decision of many important cases, commonly known as the "granger cases," which came up to the supreme court from Iowa and Wisconsin.[2] After years of litigation, the position of the commission was thus finally established by the courts.

1. 94 U. S. 113.
2. Davidson & Stuve, *op. cit.*, 1036.

SECTION VII.

General Legislation and Litigation.

In the preceding chapters, the legislation which provided a scheme for state regulation of railroads in Illinois has been discussed, together with the litigation which grew out of it and which finally firmly established the position of the railroad and warehouse commission and their right of control. There remains for our consideration a large body of legislation, which, while lacking the importance of the laws already considered, nevertheless deserves mention in a history of railway legislation. To this should be added some railway litigation arising under laws already referred to in this essay, though dating from the period prior to 1870, which had an important bearing in the railway history of the state.

Of the laws which have not yet been considered, the most important are those providing for the incorporation of railway companies and defining the powers of the companies so incorporated, and the laws which provide rules in the nature of police regulations governing the management of the railway business in the state.

We have seen that the constitution of 1870 prohibited the chartering of any corporation by special laws[1] and that in 1871 the legislature passed a general incorporation law for railway companies.[2] This law is still in force and, with a few minor changes, is the law governing the incorporation of railway companies at the present time. In 1877 the act was amended by adding a provision granting railway corporations the right to purchase another company,[3] and in 1891 a further amendment was made to the effect that a railway company in this state

1 Above, p. 24.
2 Above, p. 26.
3 Laws of Illinois, 1877, 163, 4.

which operates a railway connecting it with a railway owned by a company of another state might, acting by itself or jointly with this foreign company, purchase the stock and securities of the connecting road.[1] In 1875 an act was passed empowering a railway company operating other companies under lease for a period of not less than twenty years to buy or sell "the remaining interests, property or franchises of such railroads" on terms agreed upon by the parties to the lease.[2] A provision was added which forbade railroads in other states from becoming owners of roads in this state under the act, but in 1895 this restriction was removed.[3] An act of 1883 provided for the consolidation of corporations owning a railroad situated partly in Illinois and partly in other states when separate corporations are organized in each state through which the road runs.[4] In 1885 railroads organized in this state were, on complying with certain conditions, given the power to purchase and to hold railroads which are located in other states, but with which they connected.[5] In 1889 the acquisition of a railroad in this state by a corporation of another state was made possible by a law which provided conditions under which a corporation of another state which was in possession, or owned or controlled the capital stock of a railroad in this state, might secure ownership of the road.[6] The passage of these laws seems to have been largely due to the demand for consolidation of railroads and to the growing faith in the advantages which consolidation would bring about. At the same time this legislation by its restrictive features shows the fear entertained by the legislature that the roads would be taken beyond the control of the commission.

The second class of laws to which I have referred, the laws providing regulations as to the details of the management of the railway business of the state, constitutes the greater part

1 Laws of Illinois, 1891, 184-5.
2 *Ibid.*, 1875, 96.
3 *Ibid.*, 1895, 293-4.
4 *Ibid.*, 1883, 124-5.
5 *Ibid.*, 1885, 229-231.
7 *Ibid.*, 1899, 116-7.

of the legislation which has been enacted by the general assembly since the commission was established in its final form. Before 1870 laws had been passed at different times containing various provisions with regard to the details of the operation of the railroads, the maintenance of the roadbed, the speed of trains, and matters of this sort. In 1874 an act was passed which embodied with several additions the more important provisions of this character which had been previously enacted. The act contains provisions in regard to the fencing of the track, sign boards of warning at country road crossings, the speed of trains, the stopping of trains at draw bridges and railway crossings, the handling of baggage, etc.[1] Since this law, additional provisions concerning union depots,[2] investing railway conductors with police powers while on duty on trains,[3] regulating the selling of passenger tickets,[4] the placing of interlocking switches at railway crossings,[5] and others of the same nature have been added.

In general, the laws just referred to are conservative in their character. They seem to have been enacted with due regard to the rights of the railway companies and the regulations which have been prescribed are of such a nature as to insure the convenience and safety of the public without imposing onerous restrictions upon the railway companies.

It is a noteworthy fact in regard to Illinois railway legislation that no laws restricting railway pooling have been enacted, although many other states have adopted restrictive legislation of this nature. Indeed such legislation as has been enacted is on the whole favorable to railway consolidation. Not only has the legislature not taken any action toward the prohibiting of pooling, but the railroad and warehouse commission seems to have given it little consideration. The attitude of the commissioners, which in all probability has coin-

1 Revised Statutes of Illinois, 1874, 807-14.
2 Laws of Illinois, 1875, 97-99.
3 *Ibid.*, 1879, 223-4.
4 *Ibid.*, 1875, 81-2.
5 *Ibid.*, 1891, 180-82.

cided with that of the legislature, is given in their report for 1886 in which they take the ground that the enforcement of the schedule of maximum rates will prevent the evils which might arise from pooling contracts between roads lying within the state, and that the state is powerless to regulate pooling contracts between inter-state roads.[1] Congress prohibited pooling by inter-state roads in 1887. In the meetings of the general assembly of the state which followed, several bills were introduced aiming at the prohibition of pooling, but none was able to command a majority of both houses.[2]

Reference has already been made to the "tax grabbing" and "Lake Front" laws as disturbing elements in the railway situation in 1869.[3] The importance of the workings of these laws in the later history of the state is sufficient to justify their further consideration. The "tax grabbing" law, which, it will be remembered, offered inducements to local units to issue bonds in aid of railroads, was passed with the intention of remedying the inequalities of railway extension throughout the state. The local bodies quickly took advantage of the law and over $15,500,000 of these bonds were issued by various counties, townships, cities and towns and registered with the state auditor.[4] In 1871 the general assembly passed an act further defining the method of distributing the taxes paid into the state treasury on the bond account between the different townships, cities and towns in the same county which had issued bonds.[5] In 1874 a decision by the supreme court of the state in the case of Ramsey v. Hoger declared the law unconstitutional on the ground that it interfered with the constitutional provision which requires equality of taxation for state purposes. This decision of the supreme court worked great hardship on the local units which, because of the benefits which the law held

1 R. R. & W. Com. Report, 1866, xxi.
2 See House and Senate Journals.
3 Above, p. 22.
4 Auditor's report in Reports of General Assembly, 1882, 1:200-207.
5 Laws of Illinois, 1871-72, 192-3.

out to them, had bonded themselves heavily in aid of the railroads. In many cases repudiations of their debts followed[1]. After the decision was handed down the state treasurer was uncertain as to the status of over $430,000 which had come into the state treasury as a part of the local bond fund.[2] To solve this difficulty, in 1875, a law was passed making the state sole trustee of all of the excess over $\frac{2}{3}\frac{9}{5}$ of the state tax of 1873, except so much as had been carried to the local bond fund and paid out of the treasury for the redemption of the bonds, and a method of refunding such excess was provided.[3] The excess of $\frac{1}{7}\frac{1}{6}$ of the state tax was increased by the law of 1869, allowing the different localities to devote part of their state tax to paying interest and principal on their railway bonds. The provisions of this measure clearly showed the injustice of the law of 1869 as it was made evident that the state taxes were thereby increased nearly twenty-five per cent. The localities which had not issued bonds were obliged to bear this increase, though they received no corresponding benefits as did the localities which had issued bonds. The legislature from time to time discusssed the matter of relieving the embarrassing possition in which the localities which had issued bonds were placed by the abrogation of the law, but no action was taken.[4]

A repetition of the evils due to the unlimited issue of railway aid bonds was made impossible by the constitution of 1870. One of the sections which was submitted to the people for separate vote and which was endorsed by them provided that "no county, city, town, township or other municipality shall ever become subscriber to the capital stock of any railroad or private corporation or make donations to or loan its credit in aid of such corporation". Provision was, however, made for the issuance of aid already voted. A law of 1874 prohibited the issuance after 1877 of bonds which had been voted before 1870

1 76 Ill. 432.
2 Davidson and Stuvé, 935, note.
3 Reports of the general assembly, 1875.
4 Davidson and Stuvé, *op. cit.* 935; House and Senate Journals.

and not yet issued.[1] In 1877 the liability for the issuance of bonds voted was extended to 1880[2], and a law of 1883 finally decided against any further issuance after that year except under certain conditions.[3]

The "Lake Front" act proved to be equally as disturbing an element as the "tax grabbing" law, but its influence was felt in Chicago alone, while the evils of the "tax grabbing" law were felt throughout the state. The act became the basis of a struggle in the courts which lasted for twenty years. On petition made within four months after the passage of the act, the United States circuit court issued an injunction restraining the city of Chicago from releasing and the railway companies from occupying the land granted for depot purposes. The record of this proceeding was destroyed in the great Chicago fire of 1871 and was never fully restored.[4] The opposition to the act was so determined that in 1873 it was repealed.[5] The repeal, however, was of little value in effecting a definite settlement of the rights of the respective parties. In 1883, the attorney-general of the state began proceedings in the circuit court of Cook county to quiet title and remove the cloud upon the title of the state to the submerged lands. The case was removed to the United States circuit court for the northern district of Illinois. The Illinois Central defended its title by alleging the unconstitutionality of the repealing act of 1873 on the ground that it impaired the validity of contracts ; that it interfered with vested rights ; and that it was in violation of the provision of the constitution of 1870 which prohibited the release of impairment of any tax imposed upon the Illinois Central Railroad.[6] The circuit court held in a decision handed down in 1888 that the effect of the repealing act was to abrogate the cession of the submerged lands to the railway company. It was also held by

1 Revised Statutes of Illinois, 1874, 797.
2 Laws of Illinois, 1877, 157-8.
3 *Ibid.*, 1883, 122, 3.
4 A. T. Andreas, History of Chicago, III: 92.
5 Laws of Illinois, 1873-4, 119.
6 Andreas, III: 192.

the court that the return to the railway companies, at their request, by the comptroller of Chicago, of the money deposited by them as the first installment to be paid to the city for the land for depot purposes had deprived them of the benefit which had accrued to them from the tender and the repeal of the act accordingly left the title in the city of Chicago.[1] The circuit court further confirmed the title of the road to the piers and docks then built out into the lake so far as they did not extend beyond the point of practical navigability, but perpetually enjoined the company from erecting further structures over or filling in the bed of the lake between Chicago River and Sixteenth street.[2] The case was appealed and was tried at the October term, 1892, of the Supreme court of the United States. The decision of the lower court was sustained, a majority of the court holding, with regard to the act of 1869 and its repeal, that "it was not competent for the legislature to thus deprive the state of its ownership of the submerged lands in the harbor of Chicago, and of the consequent control of its waters; and the attempted session of the act of April 16, 1869, was inoperative to affect, modify, or in any respect to control the sovereignty and dominion of the state over the lands, or its ownership thereof, and any such attempted operation of the act was annulled by the repealing act of April 15, 1873, which to that extent was valid and effective".[3] The claim to the land granted for depot purposes was not revived by the railway company. In another attempt made recently by the Illinois Central to secure title under its charter to submerged land recovered by it, the superior court of Cook county held that the company had no right under the charter to take possession of land submerged beneath Lake Michigan. In this decision, the court was sustained by the Supreme court of Illinois in 1899[4] and by the

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1 Moses, *op. cit.* II; 782-3.
2 184 U. S. 87.
3 146 U. S., 387.
4 173 Ill. 471.

Supreme court of the United States in 1900[1]. Appeal was taken to the state to the decision of the circuit court in 1888 as to the right of the railway company to the piers built out into the lake but the decision was affirmed by the circuit court of appeals in 1899[2] and by the Supreme court of the United States in 1902[3] Here the matter rests for the present, and the decision of the Supreme court seems to be regarded as a final settlement of the long controversy.

1 176 U. S. 646.
2 91 Federal Reporter, 955.
3 184 U. S. 77.

SECTION VIII.

Railway Construction and Consolidation.

In 1870 Illinois had 4,823[1] miles of railroad within her boundaries. In the thirty years since that date the railway mileage of the state has more than doubled, the mileage for 1892 being 11,031[2]. The increase in railway construction has not been uniform throughout this period, but there have been two distinct periods of rapid construction. The first of these periods beginning with 1870 extends to about 1876. In the five years from June 30, 1871, to June 30, 1876, the railway mileage increased 2,736 miles, an average of 547 miles a year[3]. The rapid extension of the railroads during this period was probably due in great measure to the aid to railway construction which was being granted through local aid bonds. For three years there was somewhat of a lull in railway building, but in 1879 a second period of rapid extension began during which, however, the building of new lines of road was not carried on so rapidly as it had been in the earlier period. In the nine years from June 30, 1879, to June 30, 1888, the number of miles of railroad in the state increased from 7559[4] to 9918[5], an increase of 2,359 miles in the nine years. The year of greatest increase during this period was 1883-84, when 375 miles of road were built[6]. This was a period of much more rational development than was the earlier one. The extension of the railroads was in the main due to an increased need for railway service and not to an ar-

1 Poor, Manual, 1871-72, xxxiii.
2 R. R. & W. Com. Report, 1902, 92.
3 *Ibid.*, 1871–76.
4 *Ibid.*, 1879, viii.
5 *Ibid.*, 1888, xxviii, xxix.
6 *Ibid.*, 1879–88.

tificial stimulus such as was furnished by the railway aid bonds. In the fifteen years succeeding 1888 only 1,100 miles of road have been built. It is, therefore, fair to assume that Illinois had by 1888 reached a state of equilibrium in which railway development would keep pace with the slow but steady increase of industrial development.

Notwithstanding the fact that the increase in mileage in Illinois has been great, it by no means represents the full increase in the usefulness of the railroads which has come about in the same time. The improvements which have been introduced during the past thirty-three years have brought to the roads an increase in efficiency which is several times as great as the increase in mileage. In 1871, of the 5,490 miles of track in Illinois, more than ninety per cent. was laid with iron rails weighing from thirty to fifty-six pounds to the yard[1]; by 1902 ninety-nine and four-tenths per cent.[2] of the mileage of the roads was laid with steel rails weighing from thirty-five to one hundred pounds to the yard. In 1871 the road way was ballasted only in those places where trouble was caused during the wet season[1]; in 1902 eighty-five per cent. of the mileage was ballasted[2]. In 1875, in the 7,100 miles of road in the state, there were fifteen stone arch bridges[3], but in 1902, with only an increase of about fifty per cent. in the mileage, there were in use 444 masonry bridges and 2156 iron and steel bridges[4]. In 1870, there were 99½ miles of double main track in the state[5], or about 1-60 as many miles of double as of single track; in 1902, the number of miles of second, third, fourth and additional main tracks was 1,827[6], about 1-6 the mileage of the single main track. In 1870 also the protection of a crossing by an interlocking switching device was unknown, but by 1902,

1 R. R. & W. Com. Report, 1895, xi.
2 *Ibid.*, 1902, 179.
3 *Ibid.*, 1895, 4.
4 *Ibid.*, 1902, 183.
5 *Ibid.*, 1871, Table "H."
6 *Ibid.*, 1902, 79.

there were 246 of such devices in use.[1] These merely illustrate the many improvements that have been introduced. In addition, block signalling systems have been put into operation, curves and grades have been reduced, tracks have been elevated and many changes of like benefit have been effected. Following the direction of the improvements which have been mentioned, and largely as a result of them, have come changes in the transportation of passengers and freight which have revolutionized the railway industry. The size and power of the engines and the capacity of the cars have been increased, longer trains have come into use and a much higher rate of speed has been attained by both passenger and freight trains.

The influence of these changes on Illinois has been great. It is not confined to the mere fact that they have secured an increased efficiency for the roads of the state. With the improvements which have been introduced has come a reduction in the rates which would have been almost impossible without them. This reduction in rates has caused a great extension in the market for the grain of Illinois and of the Northwest, and an increased demand has followed as an inevitable result. The extension of the market caused by the reduction in rates has made it possible for the states of the West and Northwest to supplant Illinois in the production of wheat and the farmers of the state have consequently been forced to turn from wheat-raising to corn-raising which the reduced rates made a much more profitable industry than it had previously been. This change has in the end probably proved of greater benefit to the agricultural interests of the state.[2]

Two other results of importance in the railway situation in Illinois have ensued. The extended markets for the com-

1 R. R. & W. Com. Report, 1901, ix.

2 In 1869 Illinois ranked as the first wheat producing state in the union with a production of 30,128,405 bushels; by 1899, this production had decreased to 19,795,500 bushels and the state was fourteenth in amount of wheat produced. The production of corn during the same year increased from 129,921,395 bushels to 398,149,140 bushels, Illinois ranking first in both years. Census 1900, vol. VI, Part II, pp. 80, 93.

modities of the Northwest has created the need for extended railroad facilities to transport them across the state, and the world market which has been thrown open to Illinois commodities has led to an enlarged prosperity and at the same time to an increased dependence by the people of the state on the welfare of the railway system. Railways have thus become of transcendent importance to the well being of the state not only through the extension that has been made in the lines themselves, but also through the changed conditions that have been brought about by the improvements in the management of the transportation industry.

There is a second feature which has marked the development of the railway industry in Illinois and which has had an equal importance with the changes in railway construction and equipment in securing a better service to the people of the state. This feature of railway development is the growth of railway consolidation. In this process the two distinct lines along which consolidation has progressed in the United States at large[1] have been evident in Illinois. During the earlier part of the period under consideration, consolidation was chiefly effected by the union of short connecting lines. In the latter part of the period, the chief method by which consolidation has been brought about has been the purchasing or leasing of a minor road by one of the great railway systems.

On June 30, 1871, the average number of miles of road in Illinois operated by the different companies was 263.[2] By 1875, the average had decreased to 142,[3] and from that time until 1900 it had not varied much, the average for 1900 being 161 miles.[4] From these figures it might seem that there had been no tendency toward railway consolidation in Illinois, but there had been a movement toward short lines of road. The error lies, however, in taking the number of miles owned in Illinois

1 Newcomb, "Railway Economics", 120–1.
2 R. R. & W. Com. Report, 1871, Appendix "H", II.
3 *Ibid.*, 1875, 300–1.
4 *Ibid.*, 1900, Lxxxii-Lxxxvi.

the various companies operating in the state as a basis for estimating the amount of consolidation that has taken place. The true basis for the estimate is the whole number of miles owned by the roads rather than that part which lies within the state. The significant fact for our consideration is that the roads of the state have become parts of great railway systems. The following table[1] shows the progress of consolidation as far as it can be traced statistically. It does not include consolidations which have been effected without any change in the operating organizations. The mileage given is the total mileage of all roads which operate with in the state.

It will be seen from the table that there has been a great increase in the number of roads in the state which are parts of great railway systems. In 1871 only a little over one-half of the mileage of the state represented part of a railroad over six hundred miles long and the length of the longest road which had any mileage in the state was 1,224 miles.[2] By 1900, eighty-nine per cent of the mileage was part of railway systems over six hundred miles long, and one road running through the state operated 6,410 miles of line.

This consolidation, the extent of which is shown by the table, has secured two benefits to the travelling and shipping public. Better service has been secured than would have been possible if it had remained necessary for each shipment to traverse several different lines. Consolidation has also made possible lower rates on account of the reduction in operating expenses which has been secured by the bringing of several roads under one management.[4]

It will be seen that the railway system of Illinois has not only grown enormously since 1870, but its usefulness has also been increased by the introduction of improvements and through the consolidations which have taken place. As a result of these

1 The table is adopted from the one in the Reports of the Statistician of the Interstate Commerce Commission. (See next page).

2 The Chicago and Northwestern Railway Company.

3 The Chicago, Milwaukee and St. Paul Railway Company.

4 Newcomb, *op. cit.*, 122.

changes, lower rates have ensued. There has, therefore, been an increase in efficiency far greater than would be indicated by the mere increase in mileage.

Items.	Mileage over 600	Mileage from 300-600	Mileage from 100-300	Mileage under 100	Total
1871					
Number of roads	4	3	7	3	17
Aggregate mileage in class	3661	1448	1368	133	6610
Per cent. of total mileage	55	22	21	2	100
1875					
Number of roads	9	5	12	24	50
Aggregate mileage in class	9309	2313	2312	1178	15112
Per cent. of total mileage	62	15	15	8	100
1880					
Number of Roads	9	6	16	17	48
Aggregate mileage in class	13859	2362	2923	775	19919
Per cent. of total mileage	69	12	15	4	100
1885					
Number of roads	11	10	17	19	57
Aggregate mileage in class	22234	4317	3396	719	30606
Per cent of total mileage	73	14	11	2	100
1890					
Number of roads	14	13	16	20	63
Aggregate mileage in class	36826	5737	3128	676	40367
Per cent. of total mileage	76	14	11	2	100
1895					
Number of roads	14	12	14	27	67
Aggregate mileage in class	35008	5149	2617	817	43591
Per cent. of total mileage	80	12	6	2	100
1900					
Number of roads	21	7	13	27	68
Aggregate mileage in class	50810	2914	2565	805	57094
Per cent. of total mileage	89	5	5	1	100

In connection with this increase in the efficiency and mileage of the steam railroads must be noted the growth of interurban electric railways. In 1899 when the reports of the electric roads were for the first time compiled separately by the commission, the total mileage of elevated and interurban electric lines reporting was 97.06. (Report 1899, III.) This mileage more than tripled in the following three years aggregating in 1902, 352.35 miles. (Report 1902, 8.) This movement which

is yet in its infancy bids fair to become a factor of great importance in the transportation interests of the state. It is yet too early to determine whether the electric interurban lines will seriously decrease the earnings of the steam railroads by their competition in the local passenger traffic or whether by serving as "friends" to the steam roads, they may not actually prove of benefit to them. However this may be it is certain that by the extension of passenger freight and express facilities into the heart of rural districts, a benefit of inestimable value will be conferred upon much territory which must otherwise be practically devoid of easily accessible means of communication.

SECTION IX.

Later Work of the Commission.

By 1880, as we have seen, the authority of the commission and the validity of the restrictive legislation were firmly established by the courts. The commission has consequently since that time been able to carry on its work without being hampered by delays in litigation. During this later period, as in the earlier one, the fixing of maximum rates has occupied a prominent place in the work of the commission. The first schedule of maximum rates went into effect in 1874. By 1881, a feeling that a change in the conditions since that time had made necessary a new schedule caused the general assembly to adopt a joint resolution requesting the commission to revise the schedule.[1] In response to this request, the first general revision of the schedule of maximum rates was made. For the purpose of the schedule, two classes of roads were made instead of the five classes into which they were divided for the schedule of 1874. The commissioners made no definite statement as to the basis of classification, but a general estimate of the prosperity of the roads seemed to be the controlling consideration. The maximum passenger rate was fixed at three cents a mile for the roads of both classes. The freight rates of the schedule of 1881 were from twenty to thirty per cent. lower than the rates of the schedule of 1873, and according to the commissioners, from twenty-five to thirty-three per cent. lower than the rates in the adjoining states of Wisconsin and Missouri where the rates were fixed by legislation.[2] The reduction in the rates of this schedule as compared with those of the previous one corresponded closely with the actual reduction in rates

1. Senate Journal, 1881, 845.
2. R. R. & W. Com. Report, 1881, 15-18.

which had taken place throughout the country during the period.[1]

The rates which were adopted by the schedule of 1881 proved satisfactory to the managers of the different roads, and they signified a general willingness to conform their charges to schedule rates.[2] Since 1881, changes in the schedules have been made almost every year. These changes have taken place chiefly through variations in the classification of freight. The last general revision of the schedules under which the roads are working at the present time went into effect January 1, 1900. By it the uniform maximum passenger rate of three cents a mile is retained. Freight is divided into ten classes, and in addition to these, special rates are made for (1) horses and mules, (2) cattle, (3) hogs, (4) sheep, (5) wheat, (6) grain except wheat, (7) lumber, (8) salt, and (9) coal.[3]

The hearing and adjusting of complaints has proved one of the most important duties of the commission during the latter period. The policy of arbitrating complaints was undertaken in 1878, while the constitutionality of the law of 1873 was still undecided.[4] This policy proved to be very satisfactory in practice, and, although undertaken as a temporary measure, was continued as a permanent policy. In 1893, the commission adopted rules of practice to govern the method of trial of complaints brought before it for its adjustment.[5] In most cases the railroads have shown a willingness to comply with the decisions of the commission, and as a result disagreements between the shippers and the roads have had a speedy settlement without resort to the courts. This has meant a considerable saving of time and expense and has brought each party to a clearer understanding of the rights of the other. The complaints to the commission arise from many different causes. Of these causes discrimination and extortion are probably the most important,

1 Hadley, 104.
2 R. R. & W. Com. Report, 1882, xvi.
3 *Ibid.*, Schedule of rates.
4 *Ibid.*, Report, 1878, xvii, xviii.
5 *Ibid.*, 1893, 6, 153-59.

and the adjusting of complaints arising from these two sources has been productive of great benefit. Since the passage in 1891 of the act providing for the determination by the commission of the necessity for the location of interlocking switches at railway crossings, action on petitions for the location of such switches has been one of the important functions of the commission. In 1878, the commission commenced the practice of inspecting the roads of the state.[1] This additional duty which has been assumed by succeeding commissions has greatly increased their usefulness. When the physical condition of the road or the equipment is deemed insufficient for the safety of the public, an order for the improvement of the deficiency is issued by the commission to the railway company. In this respect, also, the companies have exhibited a willingness to obey the orders of the commission, and the roads have thus been kept in a sound physical condition.

The conferences which the commissions of the different states have held furnishes another feature of the work of the Illinois commission which is worthy of mention on account of the beneficial results in the way of railway regulation which may be secured in this way. The first national convention of state railway commissioners was held at Springfield in 1875. Succeeding conventions were held in 1878, 1879 and 1881. After 1881 this first movement for the conference of state commissions came to an end. In 1889 the movement was revived by the Interstate Commerce Commission. An invitation was extended by this body to all of the state commissions to attend a conference. The invitation was accepted, and beginning with 1889, the commissions of the various states, together with the Interstate Commerce Commission and representatives of the railroads have met in annual conference. The questions which have been discussed at the conferences are especially those features of railway regulation which require uniform action by the state and federal governments. Classification and railway

1 R. R. & W. Com. Report, 1878, xviii.

2 *Ibid.*, 1879, 247-59.

accounting, for instance, matters in which uniformity is especially desirable, have been given particular attention. Although the practical results of these conferences have not been important, they furnish on the whole a good medium through which the incongruities in the railway legislation of the different states can be revealed and state regulation made more effective by securing a greater degree of uniformity in the methods employed by the different sovereignties.

SECTION X.

Conclusion.

For thirty years Illinois has endeavored to control her railroads by means of the strong commission. It cannot be claimed that complete success has been attained in remedying the many evils, which have been in large measure due to the unsettled condition of the transportation industry. But although gross abuses have existed in the past, and in some instances still exist, the work of the commission has justified its establishment. It is true that its usefulness during the first ten years of its history was greatly impaired by the struggle which it was forced to carry on in the courts, yet during that period it was by no means a useless body, if for no other reason than that it was carrying on the fight which must inevitably have arisen between the railroads and the people before the roads would submit to public control. By 1880 the courts had finally established the validity of the law under which the commission was working, and the commission was left free to carry out its work without hindrance. But by this time the need for the exercise of the authority of the commission had greatly diminished. The evils due to the over-development of the roads were passing away as the population and business of the state increased, and the abuses of rapid railway building were remedied as the hastily built roads were placed on a sound basis. One of the most potent influences in securing the correction of railway abuses was the fact that the commission had the unquestioned power, with the aid of the courts, to force compliance with the law and with its own decisions. The railroads recognized this power and confirmed their management to the requirements of the law. Thus the commission, without being called upon to remedy actual abuses, exercised a strong potential influence in securing the correction of evils. This fact, notwithstanding the apparent diminution in the need for the commission as railway

conditions have changed, furnishes an important element in the justification of the continuance of the commission.

The schedule of maximum rates which the commission prepares is of far less importance than it was when the first one was prepared in 1874. The railroads have in a large measure come to a realization that "charging what the traffic will *not* bear" in the guise of "charging what the traffic will bear" is fully as detrimental to their interests as it is to the interests of the public, and attempts at extortionate charges have been largely abolished. Further than this, the competition between points where competition is possible serves to keep down competitive rates to a reasonable level, and through the operation of the "long and short haul" clause of the Illinois law and that of the interstate commerce law, reasonable rates between non-competing points is secured,

But complaint has arisen from some sources that the commission no longer fills a positive place, but that it has come to furnish merely an opportunity for political "graft" at the expense of the state treasury. Whatever truth there may be in such criticism of the commission of today, it is nevertheless true that it still does a work of positive value to the state. The general surveillance which the commission exercises over the state still further justifies its existence and continuance. It furnishes a permanent body to which the legislature can assign the execution of matters connected with the railroads; it exercises a general supervision over the physical condition of the roads of the state; it collects and presents to the public statistics in regard to the financial condition and management of the roads; it provides the only competent body to study the railway situation and to recommend to the legislature measures which would be of benefit both to railroads and to the people; and, finally, it furnishes the most convenient means by which the state can keep in touch with the work of the federal government and the other states, and thus make possible that united action on the part of the different sovereignties which is essential to effective control.

Although the work of the commission has thus been of great benefit to the state, a few changes in the law might greatly increase its efficiency. The law establishing the commission provides for the appointment of all three members of the board at one time for a term of two years. Although the disadvantage of the short term has been in some measure counteracted by the general practice of retaining the same commissioners in office during the four year term of the governor, the efficiency of the commission is lessened by the fact that all the members of the board retire at the same time and their duties must be taken up by men unfamiliar with the workings of the office. This defect could be easily remedied by a plan which the commission proposes,[1] in accordance with which the term of office of the commissioners would be extended to six years and one member of the board would retire every two years. There would then be only one new man on the board after each change. The usefulness of the commission could be further increased if the power which it now exercises over railroads should be extended to include sleeping-car and express companies.[2] These businesses are analogous to the railway business and are subject to many similar evils. To this power should be added also the authority of the commission to require reports of the same character as the reports of the railway companies from telegraph and telephone companies and from street railway companies. The commission should also be given the power to decide in regard to the equipment of crossings of street railways and steam railroads with interlocking devices.[3] This last power the commission claims, but its right to exercise it is questioned.[4]

There has been in the past a considerable waste of capital through the building of roads which paralleled existing lines of

1. R. R. & W. Com. Report, 1880, 9.
2. The interstate commerce commission has recommended that its power be extended in this way.
3. R. R. & W. Com. Report, 1898, xii-xiii.
4. *Ibid.*, xii.

road or which were built where the business was not sufficient to justify their construction. With the disappearance of the idea that competition of different lines would secure benefits to the public, should come some method for restraining the building of unnecessary roads. Under the present general incorporation law, any number of persons not less than five may become incorporated for the purpose of constructing and operating a railroad. Under this law more than nine hundred franchises for the construction of new railroads have been issued.[1] Although many of the roads thus chartered have not been built, a need exists for some positive means of controlling the unlimited granting of railway franchises and the building of unnecessary roads. It is doubtless true that much greater evil has arisen from this latter cause in the past than is to be expected in the future, but the securing of franchises for purely speculative purposes is as pronounced an evil at the present time as it has been in the past. Beneficial results could be secured by a law requiring a proper certificate to be obtained from the railway commission before articles of incorporation are granted for the construction of any new railroad in the state.

There is opportunity for increasing the usefulness of the commission in the matter of securing uniformity of railway accounts. As the law now stands, the only restriction placed upon the keeping of their accounts in any way which the roads see fit lies in the fact that on certain particulars, specified in the law of 1871, the roads are required to make a report to the commission. Uniformity in railway accounting is eminently desirable, and if the method of accounting is to be prescribed, the commission should be delegated with the power of prescribing it. Action along this line would, however, be of little value until the initiative is taken by the federal government in giving the Interstate Commerce Commission power to prescribe uniform methods of accounting for interstate roads. Should

1. R. R. & W. Com. Report, 1895, xix.

this action be taken by the federal government, the states having railway commissions should confer upon them the power to prescribe the form in which the railroads within the state shall keep their accounts.

In general the legislation which has been adopted by Illinois since 1870 with regard to the railroads has promoted a harmonious development of the transportation industry in the state. A due regard has been paid to the rights of the people but in most cases in protecting public interests, the legislature has not worked injustice to the roads. During the period of thirty years over which the legislation under our consideration has extended, the legislature of the state has many times been, forced to the front in seeking a solution of the railway problems which were characteristic of the development of the roads in the West. The successful dealing with these problems has secured for Illinois a condition of railway development and efficiency which justly entitles her to the rank of the first railway state in the Union.

BIBLIOGRAPHY

Adams, C. F.
Railroads, Their Origin and Problems. New York. 1886.

———
The Granger Movement. North American Review, CXX: 394-424, Boston, 1875.

Andreas, A. T.
History of Chicago. Chicago. 1886.

Clark, F. C.
State Railroads Commissions and How They May Be Made Effective. Publications of the American Economic Association. VI: 473-582. Baltimore, 1891.

Davidson & Stuve.
History of Illinois. Springfield, 1884.

Debates of the (Illinois) Constitutional Convention of 1870. Springfield.

Dixon, F. H.
State Railroad Control, with a History of its Development in Iowa. New York, 1896.

Hadley, A. T.
Railroad Transportation. New York, 1886.

Hendrick, F.
Railway Control by Commissions. New York. 1900.

Illinois House Journal. Springfield.

Illinois Senate Journal. Springfield.

Illinois Supreme Court Reports. Springfield.

Langstroth & Stilz.
Railway Cooperation. Publications of the University of Pennsylvania. Series in Political Economy and Public Law. No. 15, Philadelphia, 1899.

Laws of Illinois. Springfield.

McIntosh, A. T.
The Regulation of Railroads by the State of Illinois. Manuscript Thesis in the Library of Northwestern University. 1900.

McLean, S. J.
State Regulation of Railways in the United States. Economic Journal, X:349-369. London. 1900.

Moses, John.
Illinois, Historical and Statistical. Chicago. 1895.

Newcomb, H. T.
Railway Economics. Philadelphia, 1898.

Paine, A. E.
The Granger Movement in Illinois. Manuscript Thesis in the Library of the University of Illinois. 1900. [This will be the next number of the Studies.]

Perry, E. R.
The Regulation of Railroads by the State of Illinois. Manuscript Thesis in the Library of Northwestern University. 1900.
Poor, H. V.
Manual of the Railroads of the United States. New York, 1868.
The Prairie Farmer, v.44. Chicago, 1873.
Proceedings of the Annual Conferences of the State Railroad Commissioners. Washington, 1889—
Reports of the Railroad and Warehouse Commission, Illinois. Springfield, 1871.—
Reports of the Statistician of the Interstate Commerce Commission. Washington, 1888.—
Reports of the General Assembly of Illinois. Springfield.
Revised Statutes of Illinois. Springfield and Chicago.
United States Statutes at Large. Washington.
United States Supreme Court Reports. Washington.

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